UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 23-10063-shl

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In the Matter of:

GENESIS GLOBAL HOLDCO, LLC,

Debtor.

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United States Bankruptcy Court

300 Quarropas Street, Room 248

White Plains, NY 10601

March 18, 2024

9:09 AM

B E F O R E :

HON SEAN H. LANE

U.S. BANKRUPTCY JUDGE

ECRO: ART / ANA VARGAS

HEARING re ***HYBRID HEARING***

HEARING re CLOSING ARGUMENTS RE: Doc. #1325 Debtors' Amended Joint Chapter 11 Plan

Transcribed by: Sonya Ledanski Hyde

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P R O C E E D I N G S

THE COURT: Good morning. Please be seated. I'm immediately greeted by a panda with a sweater on the internet. I have no idea how to react to that. Good morning. We are here this morning for the Genesis Global Holdco, LLC, Chapter 11, which is jointly administered and, more particularly, for confirmation closing arguments.

So, because this is a non-evidentiary hearing, what that means is we can have people listen on Zoom and I think that all just works just fine this morning, as far as I can tell. And that's obviously different than the evidentiary portion.

All right, so good morning once again. So, we're here for closing arguments. And, again, I know there are people who are listening in on Zoom, and we obviously have a packed house as well because I had asked folks who were going to argue to be here in person because it's much easier to have an argument on a complicated case when folks are present. Interrupting counsel, sort of a question and answer kind of discussion can be difficult enough in person but it's really less than ideal on the internet.

So, with that, we'll start how we always do with appearances. So, let me find out who's here on behalf of the debtor.

MR. O'NEAL: Good morning, Your Honor. Sean

O'Neal on behalf of the debtors, Cleary Gottleib. I'm here with my colleagues Jane Vanlare, Thomas Kessler and Jack Massey.

THE COURT: Good morning. On behalf of the Official Committee of Unsecured Creditors?

MR. WEST: Good morning, Your Honor. Colin West at White & Case for the Official Committee. I'm here with Mr. Shore, Mr. Chris Shore, and Phil Abelson.

THE COURT: Good morning. On behalf of the ad hoc group?

MR. ROSEN: Good morning, Your Honor. Brian Rosen, Proskauer Rose, on behalf of the ad hoc committee and I'm here with Mr. Jordan Sazant.

THE COURT: Good morning. On behalf of PCP?

MS. LIOU: Good morning, Your Honor. Jessica Liou from Weil Gotshal & Manges on behalf of DCG. I'm here with Jeffrey Saferstein and Furqaan Siddiqui.

THE COURT: Good morning. On behalf of the CCAHG -- which means this case has gone on long enough if that acronym rolls off the tongue -- with all due respect to your clients.

MR. EVANS: Oh, Your Honor, Joseph Evans from McDermott Will & Emery on behalf of Crypto Creditors Group. I'm here with my colleagues, Darren Azman, Greer Griffith and Luke Barrett. Good morning, Your Honor.

THE COURT: All right, good morning. Let me find out who's here on behalf of Gemini.

MR. SMITH: Good morning, Your Honor. Dustin Smith from Hughes Hubbard & Reed appearing on behalf of the Gemini Trust Company as agent for the end users.

THE COURT: All right, good morning. On behalf of the ad hoc group of dollar lenders?

MR. LIEBERMAN: Good morning, Your Honor. Seth Lieberman of Pryor Cashman here with my colleague Daniel Brenner on behalf of the ad hoc group of dollar lenders.

THE COURT: All right, good morning. On behalf of the United States Trustee's Office?

MR. ZIPES: Good morning, Your Honor. Greg Zipes with the U.S. Trustee's Office.

THE COURT: All right, good morning. And on behalf of SOF?

MR. DREW: Good morning, Your Honor. James Drew from Otterbourg P.C. on behalf of SOF.

THE COURT: All right, good morning. On behalf of the New York Attorney General?

MR. DRAGHI: Good morning, Judge. Tom Draghi from Westerman Ball on behalf of the New York Attorney General's Office.

THE COURT: Good morning. On behalf of the SEC? They may or may not have someone here in person today. On

behalf of New Jersey, which may be in the same situation. On behalf of the Texas Securities Board, same situation. On behalf of Chainview Capital? All right. On behalf of BAO?

MR. MEDINA: Good morning, Your Honor. Eric Medina on behalf of BAO Family Holdings.

THE COURT: On behalf of, I believe it's Mr. Gorisse, but I may be saying that not quite correctly so please straighten me out.

MS. MOSSE: Good morning, Your Honor. Julia Mosse from Katten Muchin Rosenman, LLP, on behalf of Ted Gorisse, and with me is my colleague Shaya Rochester.

THE COURT: All right, good morning. So, with that, let me find out if there are any other appearances that folks need to make this morning that I have missed. All right. Again, the order of appearances -- there's nothing to be read into that, I just wanted to make sure to get everybody and I'm working off several different lists to make sure I do that.

All right, so with that, I know we have lots of discussion on the merits to go but I know we also have probably some preliminary matters to discuss. So, Mr. O'Neal?

MR. O'NEAL: Thank you, Your Honor. Sean O'Neal, Cleary Gottleib on behalf of the debtors. We're here today, obviously, for the closing arguments on confirmation plan.

I'm going to turn the podium over to Ms. Vanlare here momentarily, but we do have a few housekeeping matters that we'd like to take care of first. The first one is that we would like to make an oral motion to extend exclusivity. The exclusivity periods expire today, and so we would like to make an oral motion to extend exclusivity periods until 14 days after Your Honor either grants or denies confirmation of the plan -- enters an order granting or denying confirmation of the plan.

THE COURT: Do you have anything you want to say in support -- I mean, it's fairly obvious what the standard is --

MR. O'NEAL: Certainly.

THE COURT: -- in terms of making progress. The fact that we're here today I think evidences that. But anything else you want to say?

MR. O'NEAL: Your Honor, I thought I'd spend about a minute or two.

THE COURT: Sure.

MR. O'NEAL: Also, I should note that we kind of previewed this with plan support parties -- that would be the creditors committee, the ad hoc group, the dollar group and the New York Attorney General, and none of them have any objections to this concept. I think the fact that we're here today has shown that we've made substantial progress.

In addition, since the last extension which was granted on December 5th, we've continued to accomplish a lot on the cases. The plan has been overwhelmingly approved by all voting classes, as of the voting deadline on January 10th.

In addition, we've had great success in settling a few significant claims. Those claims including the SEC's claims, the New York Attorney General's claim and then, of course, the Gemini claim.

In addition, we've been able to substantially narrow issues on confirmation, and you'll find out from Ms. Vanlare today that we've also resolved two of the objections that were mentioned in the last -- or at least one of the objections that was mentioned in the letter that we submitted on Friday. BAO is now resolved, Your Honor, as is SOF. We had mentioned BAO in the letter but not SOF.

And, in addition, we've been continuing to reconcile claims. That's been taking quite some time. So, we think, all in all, you know, that we've shown progress. I should mention too because I know that folks are very interested in this -- we had obtained an order getting authority to sell or redeem Grayscale Bitcoin shares. We've been actively doing that. And I can report that, as of today, we've redeemed approximately $600 million worth of GBTC shares. And we've converted those effectively to BTC, which will be helpful for the distribution process.

And then I think -- with that, Your Honor, I think the evidence at the confirmation hearing as well as what I just said we believe supports our request.

THE COURT: All right. Let me hear from any party who'd like to be heard in connection with the request for exclusivity. All right, let the record reflect that among the large assemblage, no one has risen. It's not surprising given where we are. And I find that an extension in exclusivity is entirely appropriate. Given the circumstances, people disagree about what should happen here but in terms of the progress in the case, I think there really can't be much debate. So, I find it satisfies all requirements of the law given the current record in the case, which you've highlighted and which has I think been pretty apparent given the recent court proceedings.

MR. O'NEAL: Thank you. And thank you, Your Honor, for allowing us to do that on an oral basis rather than drafting --

THE COURT: Oh, you'll save some money and I think that may be one thing that everybody in this room is a fan of. So, that's fine.

MR. O'NEAL: Yeah.

THE COURT: So, I would say to submit an electronic version of the proposed order and just say a final application, and then that way we have that on the

record.

MR. O'NEAL: Certainly, Your Honor. Secondly, we'd like to report on Gemini, the Gemini settlement agreement. You will recall, Your Honor, at the close of the hearing on February 28th, we announced that we had reached a deal in principle. I'm pleased to announce today that we finalized the settlement documentation and we expect to be filing a 9019 motion today as soon as we possibly can. A lot of hard work has gone into that over the past few weeks and we're very pleased that we were able to get there.

So, we're going to be requesting a hearing for that for April 16th, which will give plenty of time -- more than actually the required amount of notice. But given the number of Gemini earned users whose interests are at stake, we thought it made sense to provide more than required notice.

THE COURT: All right.

MR. O'NEAL: With that, Your Honor, I'm going to turn the podium over to Ms. Vanlare.

THE COURT: Thank you.

MS. VANLARE: Good morning, Your Honor. Jane Vanlare, Cleary Gottlieb Steen & Hamilton. Pleased to be here this morning.

THE COURT: Good morning.

MS. VANLARE: Your Honor, I also have some

preliminary matters I'd like to address first before going into our closing arguments. First, we had had some discussions with Your Honor and some correspondence with chambers regarding proposed findings of fact and conclusions of law. And we've also conferred with various parties in interest, and I believe what we've all agreed to is to submit a single proposed findings of fact and conclusions of law on behalf of the proponents of the plan that would be limited to 60 pages, and then a single joint findings of fact and proposed conclusions of law for the opponents, similarly limited to 60 pages.

And based on guidance from Your Honor, we understand that the deadlines would be that the opponents would submit their proposed findings on March 22nd, and the proponents would follow the following Friday, which I believe is the --

THE COURT: 29th.

MS. VANLARE: 29th, thank you.

THE COURT: All right, thank you very much. And my thought is to just go through all of these preliminary matters and if anybody wants to chime in -- unless you think we should take them one at a time. Your call.

MS. VANLARE: I only have one more preliminary matter, which is the exhibits and the evidentiary record. Your Honor, we spoke about it at length at the March 6th

hearing. We went through some of the additional exhibits at that hearing. We then followed with a notice of filing of exhibit lists. That's at Docket Number 1481. We followed a similar format where we included the evidentiary record based on what had been discussed and submitted during the hearing on February 26th through the 28th. And then we also included a separate exhibit of supplemental exhibits, and we went through those.

As for the debtors, we don't have anything additional to add, but I do believe that the committee had some objections and wanted to be heard on some of the exhibits. So, I'll cede the podium so that we can address that issue.

THE COURT: All right, yeah, please.

MS. VANLARE: Thank you.

MR. EVANS: Your Honor, can I approach just for one second, very quick? It's just on the crypto creditors group. We plan to submit a 20-pager that was separate from DCG, so they'd have 40, we'd have 20. So, it's just going to be one brief, it'll be --

THE COURT: Well, what I understand is everybody one side will be 60 pages, everybody else on the other side it'll be 60 pages. I know that the -- having prepared joint filings in my prior life, I know that that can be a bit of a logistical nightmare. So, as long as you all have agreed

that the amount of pages total 60, that's fine. You know, I really don't care if it's all one heading and one font. I'm fine with that. All right, thank you. Perfectly reasonable question.

I once had a case that I think settled because there was such an onerous joint filing requirement at a pretrial conference, and it was I think about 40 pages, people had tilt and they just settled.

MR. WEST: Good morning, Your Honor. For the record, Colin West of White & Case for the official committee. There were a number of supplemental exhibits that various parties proposed to put in, including DCG. Conscious of the Court's ability to parse out what's important and afford whatever weight the Court wishes, we were able to narrow our objections down to a single document. That is DCG's proposed -- or proposal to admit their own motion to dismiss the New York Attorney General complaint filed in the Supreme Court of the State of New York.

I don't know if the Court wishes to hear from DCG first about why it should be admitted or whether you'd like to hear from us about our objection but --

THE COURT: Well, let me -- maybe I can be helpful if I just tell you what I would take it for and what I wouldn't take it for. I, obviously, am not the judge in

that case. That is for the judge in that case to determine what to do with that case, and so DCG can file whatever it wants consistent with those rules and figure that out. So, I am not going to be looking at that for purposes of the merits of any of that.

What I understand, it was provided to me in the sense that just to the extent someone suggested that we don't vigorously dispute what's going on that case, we do. And so that's sort of writ large what I take it for. If anybody wants to take it for more than that, then we can have a discussion. But maybe -- do you have an objection with that?

MR. WEST: Well, I think we do or I think I'll just make the point and see where we go. I think that the statement was made that it was being brought in for completeness, to address a statement that Mr. Shore had made either during opening remarks or during closing related to the settlement motion.

But just to clarify, I think Mr. Shore's point in his remarks was that as part of these proceedings, you were not going to hear any argument or any evidence that there was no underlying liability associated with the New York Attorney General's action. And, in fact, Your Honor did not hear any such argument or evidence. And that was indeed sort of an agreement that we'd reached prior to the hearing,

right? In lieu of document discovery and other discovery associated with the New York Attorney General's complaint, DCG agreed that they were simply not going to be making arguments regarding the merits of that --

THE COURT: Yeah, I mean if people actually went down that road, I probably would've stopped you because it's just -- again, it's not -- someone would have to make a careful and meticulous legal argument to connect why you're making those arguments as to what it has to do with this bankruptcy. And so, DCG is its own party. It's not a bankruptcy entity in this case. And so that's how I understood it.

So, I don't think we need to overly complicate it. And I just take it for DCG has its own views about the New York Attorney General lawsuit. And it's entitled to do that, it's perfectly fine. And, frankly, it's very, very dangerous thin ice for me to start speculating about the New York Attorney General lawsuit other than what the debtor has brought here for me to consider in the settlement.

MR. WEST: Very well, Your Honor. Thank you.

THE COURT: All right. So, let me ask DCG if anything I said struck anybody as problematic. And, again, just -- I'm happy to have people talk closer to the nearest microphone but just make sure we can pick you up and that the people who are on Zoom can pick you up as well.

MR. WESNESKI: Yes, Your Honor. Joshua Wesneski for DCG, just to say that we agree entirely with the characterization without arguing the merits. It's just to respond to statements made in opening and closing. If the Court wishes to look at it, it's Page 92 of day three of the transcript, Line 18. Thank you.

THE COURT: Thank you very much. All right, so as many a trial lawyer -- trial judge has said before me (indiscernible) we'll take it for what it's worth in that context. Thank you very much.

MS. VANLARE: So, with that, Your Honor, we'd like to move the supplemental exhibits as well as the -- well, we believe the other ones are already in evidence -- we'd like to move the supplemental exhibits into the record.

THE COURT: All right. Do you want to identify them specifically or just since you're saying the statement now, just identify wherever the list is -- ECF, just so we're --

MS. VANLARE: Absolutely.

THE COURT: Belt and suspenders, all squared away.

MS. VANLARE: The supplemental exhibits for confirmation hearing were filed at ETF -- ECF1481.

THE COURT: All right. Any objections? All right, hearing none, that obviously is a reflection of all the back and forth among the parties. Again, I appreciate

that. We have lots of important things to decide so we don't need to get bogged down on other things. So, I appreciate all the work by the professionals to make a nice clean record. Thank you.

MS. VANLARE: Thank you, Your Honor. So, with respect to closing arguments, what we would propose is to go through the remaining objections. So, as Mr. O'Neill noted, we're down to three.

THE COURT: All right, so let me do this. I just want to get a sense of what the order of proceedings are today, what is contemplated, just so everybody knows.

MS. VANLARE: That's exactly where I was going, Your Honor.

THE COURT: Okay, great.

MS. VANLARE: So, we have, of course, the objection of DCG that still stands, we have the objection of the CCAHG, and then we have the objection of the United States Trustee. That's been substantially resolved. There are four issues that, as we indicated in the letter we filed on Friday, we believe they're fairly discrete and so we will address that as well.

THE COURT: All right.

MS. VANLARE: The objection of BAO Family Holdings has been resolved, subject to some representations on the record that will be made by Gemini. And the objection of

SOF has been resolved as well as of this morning, and Mr. Drew is here as well.

THE COURT: All right.

MS. VANLARE: So, in terms of the order --

THE COURT: Yeah, well, maybe you're going to answer my question. I was just trying to figure out what you all have figured out in terms of the parties supporting, the parties objecting and how you want to handle that.

MS. VANLARE: That's exactly where I was going, Your Honor. So, what we would like to do is handle DCG's objection first. So, the debtors will make our presentation on the objection. DCG will, of course, have theirs. Sorry, before we get to DCG, following the debtors we're going to have the plan proponents also present. I believe the committee, the ad hoc group and others will have remarks in support of the plan. The DCG will make their presentation. We'll then have a rebuttal of the issues raised by the DCG objection.

After that, we propose to go to the CCAHG group's objection, the McDermott group. I find that much easier to say. The McDermott group objection. So, again, we'll sort of follow the same order. We'll have the debtors make their presentation. That's going to involve myself, my colleagues Mr. Kessler and Mr. Massey. They will handle the Section 562 and other issues, and I will handle the releases. And

then, again, we would propose if anybody wants to -- any of the proponents want to speak, they can join at that time. Then, of course, the McDermott group will have their chance to present their objection, and then we'd have rebuttal.

And then we propose to go through -- again, there are really just a handful of discrete issues with the U.S. Trustee. We can go through them. Mr. Zipes can present his views on that. And then I'll conclude with a presentation on the Section 1129 factors, if Your Honor would like that, to the extent not already addressed in the preceding presentations.

THE COURT: All right. Anybody wish to be heard on order? It sounds like you all worked this out ahead of time and, again, I appreciate that. So that all sounds fine to me and we're clearly working off the same list. I think everything I mentioned I was cutting you off when you were getting ready to mention. So, that all sounds fine.

MS. VANLARE: Okay. With that, Your Honor, I think we're ready to proceed with closing arguments. Your Honor, we do have a presentation that we've prepared and it's simply to help Your Honor follow along with my presentation.

THE COURT: And I understand people are going to share their screen for the presentation so people can follow along --

MS. VANLARE: Yes, yes.

THE COURT: -- on the comically large screens that we have here. Yes.

MS. VANLARE: I believe our colleague is ready. Yes, we also have printed copies for Your Honor and for anybody in the courtroom as well.

THE COURT: And I appreciate everybody who's made the technology work seamlessly. I know I had nothing to do with it. And I know that can be a bit of a bear. So, Ms. Vanlare?

MS. VANLARE: Thank you, Your Honor. I believe we're ready to go. Okay.

THE COURT: Before you launch in, I just wanted to make sure I had my own list of each of the objections and what I thought was outstanding and to the extent it was outstanding. And I guess the only other one I think we haven't discussed was Chainview Capital. It was a reservation of rights regarding setoff. And Chainview's claim -- I wasn't sure if that was something that was still outstanding or not. We don't have to deal with it right now, I just didn't want to forget to make sure to clear the decks on that. Maybe at a break. That's fine.

MS. VANLARE: Sounds good, Your Honor.

THE COURT: All right, thank you.

MS. VANLARE: We'll work on that. Great. Your

Honor, it's been almost a year and a half since Genesis put up the gates and creditors have not been able to get their money and their digital assets back. These have been a very, very long year and a half for our creditors who've lost access to their investments, to life savings, who've seen their businesses threatened or destroyed. We've come a very long way since January of 2023. We've negotiated multiple deals in principle, we've filed plans, we've filed amended plans, we have spent countless upon countless hours negotiating with various parties in interest in our attempt to try to get to a resolution of these cases so that we can preserve value for creditors and so that we can return assets to our creditors. We finally got there, Your Honor, with the plan.

The distribution principles are a culmination of months and months of negotiations, of careful balancing in order to enable us to get here today. The plan is overwhelmingly supported by our creditors, as evidenced by the amended voting report at ECF Number 1295. We stand here and we're finally ready to return the USD and the crypto assets that we owe to our creditors and to conclude these cases. It's not everything that we owe to our crypto creditors. We're able to return about 77 percent of those creditors' in kind claims. We're able to return 100 percent of USD creditor claims under this plan.

We stand here today ready to conclude these cases and to do so in a way that's almost entirely consensual. Yet, there are a few parties standing in the way. Today, we ask Your Honor to overrule those objections and approve the plan. Principal among these objectors and the parties who are standing in the way of our distributions is DCG. So, as I mentioned, we'll address that first. We'll then follow with addressing the objection of the CCAHG group or the McDermott group.

With respect to DCG's objection, I'll give a brief introduction and then go into the main presentation. DCG is the equity owner and substantial borrower of the debtors and they've made two primary objections to the plan. The first objection is that the plan contravenes Section 502(b) of the Bankruptcy Code. Now, on this point, Your Honor, what DCG would like would lead to an incredibly perverse result. As the majority equity owner, they'd like to cap obligations to creditors at roughly a third of what they're owed, and to be in a position to take the entirety of that windfall of the bankruptcy. How --

THE COURT: Let me just ask you in terms of being very precise. So, a third -- you're saying a third of what's owed in kind, so you had given the 77 percent in kind number and 100 percent USD creditor claim number. So, what -- do you have an understanding of the precise umbers of

what DCG's view is?

MS. VANLARE: So, Your Honor, the third versus two-thirds, that's roughly the appreciation in the price of bitcoin since we filed for bankruptcy. And obviously there're fluctuations but roughly that's where we are today. So, in other words, if a creditor borrowed a bitcoin from Genesis, as of the petition date, under -- if DCG is -- if their arguments prevail, that creditor would only get a third of that bitcoin.

THE COURT: All right, so the 77 percent would be closer to 33 percent?

MS. VANLARE: The 77 percent, Your Honor, is what we are able to do for our digital creditors if the plan is approved.

THE COURT: Right.

MS. VANLARE: We would very much -- we would love to give our creditors 100 percent. We'd love to give them everything that they borrowed, all of the digital assets, but there simply are not enough assets in the estate to do that. So, the plan following, as I mentioned, countless hours and months of negotiations, we were able to achieve a consensual resolution and it's roughly 77 percent. That's as of -- using pricing as of December 31. We believe it's an enormous achievement and obviously well in excess of the one-third that would happen if DCG were allowed to prevail

and if there was another plan.

So, as I mentioned, the argument that DCG is propounding would lead to an incredibly perverse result, one that would cap obligations owed to creditors to one-third, roughly. How do they propose to do this? By using Section 502(b) as a sword. As a sword that's going to be used to slash creditor recoveries and emerge victorious, stealing away value from creditors and bleeding those creditors dry of their hard-earned investments and all of the appreciation in the value of their assets. That can't be the right result, Your Honor.

THE COURT: Well, let me ask you -- we've -- people have talked a lot in the course of this case about returning customers' assets. But, again, just in the interest of being precise, there are times when there's an asset and it's not part of the bankruptcy estate, it somebody else's asset. And then there are times when they have a claim. I'm assuming that's what's meant here is that creditors have claims -- we're talking about value of their claims. But certainly if you are a customer, you certainly have a strong view that it's your asset, although that's not the legal basis upon which any of this is proceeding.

MS. VANLARE: That's correct, Your Honor.

THE COURT: All right, thank you.

MS. VANLARE: Three reasons, three categories of

reasons why Your Honor should not approve this objection. One, the 30 billion in governmental claims. Your Honor, actually never needs -- does not need to get to Section 502(b) to overrule DCG's objection because DCG is out of the money as the equity and lacks standing to object. And, in fact, if we were to reinstate creditor claims, there's no dispute that equity would have no objection. And what we're doing with the plan is effectively reinstating and amending the contracts with our creditors and amending with their consent, the consent which they gave us through voting overwhelmingly in favor of the plan.

If we were to ignore the governmental claims for a second, it would be an absurd result that if were to reinstate, equity would get no value. And if we are one dollar short of reinstatement, equity is in line to get over $2 billion worth of value. That can't be the right result.

Secondly, restitution.

THE COURT: Well, let me back on standing. So, there've been a lot of discussion and lawyers are allowed to argue in the alternative, and sometimes judges actually can as well, but I'm trying to understand the argument here on standing, given the testimony which I believe was that it was -- Mr. Aronzon said it's possible but it seemed to be -- if you do the math, it's exceedingly unlikely. I mean, I think he said something like if crypto did the following

things and the other assets did the following things, you could potentially have a window.

So, how do I understand the standing argument in the context of that testimony? Because I don't know that anybody else testified to anything differently on that.

MS. VANLARE: So, Your Honor, I think the question that Mr. Aronzon was asked and was answering is, is there an ability for there to be recoveries beyond the general unsecured claims? In other words, is it possible that value would flow down beyond the creditor claims, as described in the distribution principles? And you're absolutely right, Your Honor. He said yes, there is under certain circumstances, if crypto prices were to fall, etc.

But I think below general unsecured claims, as I just mentioned, there's $30 billion worth of subordinated claims. So, I think you can understand his testimony to be talking about the fact that there may be value that flows down following the general unsecured claims down to the subordinated claims but, of course, there's $30 billion of allowed claims before equity would recover anything. So, I think given that testimony, I think there's absolutely -- it's absolutely consistent with our position that DCG has no standing.

THE COURT: All right. And I do remember DCG earlier making a comment that the debtors want to treat this

like a reinstatement. They can't do that. That's not something that they can do at this point. They had been optioned. They didn't do it so they shouldn't be allowed to do it now. So, what's your response to that?

MS. VANLARE: Look, I think mathematically speaking, and as I mentioned, we don't have enough assets to reinstate. We would've loved to do that. We don't have enough crypto assets to be able to fully reinstate the claims. But I think that what we're doing with the plan is reinstating the claims -- the contracts as amended. So, in other words, through the claim treatment in the plan we are effectively amending these contracts. And, again, creditors showed that they have consented to this claim treatment through overwhelmingly voting in favor of the plan.

THE COURT: So, is there any particular case authority you want me to look at for that notion?

MS. VANLARE: Your Honor, I think it's the statute and it's the fact that we have -- again, I think it's certainly not disputed that reinstatement is well-founded in the statute and in case law, and what we are doing here is something slightly less than reinstatement. And, given that, whereas if we were to reinstate, equity would have no objection, it can't be the case that they have standing to object because we're not able to get all the way there, we're able to get almost there.

THE COURT: So, let me just look at this in a slightly different way. So, I've also heard -- and I think the ad hoc group sort of seems to have teed this up as a solvent -- un-solvent debtor saying that the sort of solvent debtor exception, invoking that and saying -- and I think, and they can chime in when they come up -- but I think their notion is to look at it -- you used reinstatement sort of as a policy kind of that the Court should be mindful of, and I think they use the solvent debtor exception. My understanding, right, essentially is sort of different theories to look at what's being accomplished here?

MS. VANLARE: Absolutely. And that's our view as well. It's in our papers. That's actually Point Number 3. So, I'll --

THE COURT: No, that's fine. I'm just trying to --

MS. VANLARE: No, I'll go there next. No, because I think that is a critical point of this, and it's really kind of the reverse of the first point, which is either -- you know, again, as I think is in the evidence, we are insolvent, given the assets and the liabilities and the sheer magnitude of allowed claims, in which case DCG is out of the money as the equity and has no standing. Or, alternatively, under their view of the world, which they've said we're solvent, even if that were true, then you are in

the solvent debtor exception line of cases which dictate the fact that creditors are owed their bargained-for rights, which is precisely what we are trying to do with the plan. And the plan is entirely consistent with that body of case law that says, again, unsurprisingly, that creditors recover before equity. And that's exactly what we're doing here.

So, another important point, Section 502(b). So, we believe that Section 502(b), even if Your Honor were to get past the standing argument, we think that it is absolutely consistent with what we're doing in the plan. First, the valuation, as of the petition date is, in fact, step one of the distribution principles. Entirely consistent with them. The plan achieves a pro rata recovery among the creditors as of the petition date.

Secondly, Section 502(b) was not intended to be a cap and there's no language in the statute that attempts to codify a cap, the kind that would result here if you were to agree with DCG's version.

Thirdly, restitution. We've said this --

THE COURT: Well, let me back up on that point. So, they -- DCG has cited to a number of other judges in a number of other cases and certainly there's always the corollary, the road to hell is paved with good intentions, right? The notion that in this case, an argument could be made given the way the contracts read, whether you talk

about solvent debtor or reinstatement, that this is a just result. But judges are obviously always concerned about someone saying, well, now that you're going to go that way in terms of how you view 502, notwithstanding what these other judges have said in these other cryptocurrency cases, that opens up the Wild West in terms of thinking about claims (indiscernible) from 502(b). So, what's your argument on that?

MS. VANLARE: Your Honor, I think it's the idea of restitution. So, I think none of those cases -- no cases that we're aware of have taken the position that we have and that have really faced this question. I think, for us again, restitution is core to the case, and what do I mean by that? So, the digital creditors, they have a claim against us in the digital asset. They filed claims in the digital asset. That claim really has two parts. It has a first part which is the digital asset itself, right, the value of that digital asset as of the petition date. But there's a second part which is the restitution piece. It's the damages. It's a claim for damages for not having that digital asset as of the petition date, which is when we reached our obligations and were unable to return that digital asset.

So, in other words, if you look at the claim as having those two parts, it's perfectly consistent with

Section 502(b). Both parts are valued as of the petition date, and both are consistent with what we're trying to do in the plan.

THE COURT: But couldn't you make that argument pretty much in any case? I mean, I suppose you could be arguing for a digital currency exception, in which case the question is why -- what's the principles that make this different for digital currency, as opposed to something else?

MS. VANLARE: I don't think there needs to be a digital currency exception, Your Honor. I think that it is, however, true that this case has some unique facts and unique circumstances. And I'm not sure that there are really other situations -- I'm sure there will be at some point -- but thus far in the cases, they really haven't addressed a situation like this one where creditors lent their digital currency, that then saw an immense appreciation in value such that they really are suffering tremendous damages from the fact that they didn't have access to those digital assets as of the time of filing of the petition date.

THE COURT: Well, I understand that. Of course, if you hang around this courthouse long enough, you realize that when you think you're never going to see something again, that you almost inevitably do, if you make that

prediction. So, I guess my question is then -- you can imagine, right -- so, let's take this away from -- you know, people talk about mining cryptocurrency. Let's talk about actual metals, right? Metals go up and down, the value of metals. So, that's why I'm just trying to understand tease out sort of what things look like here in terms of general rules.

So, I get the solvent debtor issue, I get the reinstatement argument. But in terms of saying, hey, there's this other piece of the claim and it sort of wiggles loose of 502(b) because it's this restitution part. And so I'm just trying to figure out what's the limiting principle?

MS. VANLARE: I think the key point and the key difference here, in addition to what I've described already, is that this is coming up as an objection by equity. Right? So, it is -- the debtors and all of the creditors, all of the parties in interest -- and, by the way, none of the governmental claims or the subordinated claims have objected, right? This is coming up as -- and as I'll explain later, really an improper objection by the equity owner in an attempt to derail a plan that has widespread support by all of the various parties in order to try to essentially slash creditor recovers, cap them at a very low amount, in a way again that neither the debtors nor any of the creditors believe is appropriate.

And that's -- the overall context here is what makes this case very different and why I don't believe that Section 502(b) was ever intended to function in this manner.

THE COURT: I get your point on that. Because, right, the normal case, there's not enough to pay folks. And, again, you sort of normally have a certain -- using U.S. currencies is sort of the norm. That's what's in 502.

But let me ask you a slightly different question. So, you mentioned restitution. And certainly that was a word that -- when we got together to talk about this, the settlement and had closing argument on that, which we're not going to redo today obviously. But the question is how one thing relates to another.

Certainly one could imagine a circumstance hypothetically, if you said okay, the AG is entitled to do what it wants to do as a third party with its own claim, own lawsuit, and they can value -- and they've made an argument that restitution is among their laundry list of items that they could seek is number with a bullet. And so -- and they, as was said at that argument, they essentially turned to the creditors agreement here to say that's what creditors think is a fair way of valuing it.

So, but I guess my -- sorry for the long prologue, but what's the notion about saying hey, 502 is 502, treat it as 502? The claims are what they are under 502 and the

government has its claim, and if the settlement is approved and the New York AG's Office can value that restitution as it's valued in consultation with the customer victims, do you end up in the same place without having a 502 problem?

MS. VANLARE: So, I think, Your Honor, we obviously are -- we believe the settlement is a great outcome for the estates. And you heard our closing arguments and we do think that that is -- we have and continue to urge Your Honor to approve the NYAG settlement.

It was actually DCG's pleading ad counsel who said that the settlement moots their confirmation objections. We don't disagree with that necessarily. We think that -- again, we think you should approve the settlement but, separate and apart from that, we think the plan stands on its own. And we think you should approve the plan.

THE COURT: Well, I understand, I certainly understand that you're not conceding anything you're asking for for both relief. Since I have all you nice smart people here, I'm teasing out all the potential pathways. And so I guess my question is if you view it that way, what would a court in that circumstance, in your view, do? Would it say, having reached this conclusion, you should all come back and tell me what you think should happen? Should you just say, Judge, the plan would operate this way? Or there's -- I certainly am aware there are substantial mechanics. And

this is the reason I ask this question and I have a chance to ask you it at this time. There are substantial complicated mechanics and that's sort of what I'm trying to get at. What would it mean for those? Are there collateral consequences? Or is it as simple as well, restitution here, restitution there? And you all are the right people to ask.

MS. VANLARE: Understood, Your Honor. So, I think the answer -- I think what you're asking is if you were to approve the NYAG settlement but not approve the plan, what does the world look like? Is that the question?

THE COURT: Fairly put, yes.

MS. VANLARE: So, I think the answer to that is we don't have a plan in that case, and we can't make distributions on our claims which would include the NYAG claim because we would not have an approved plan. So, we would need to go back to the drawing board and in line with -- again, in that hypothetical, Your Honor's ruling on the plan -- we would need to get together with our creditors. And, of course, as the debtors, we would try to come up with the best alternative we can in that circumstance. And I don't know what that would look like, to be honest. Again, we'd have to talk to all the various parties in interest, see what people want to do, see if there's another plan to be had. I don't know, standing here today, what that looks like.

THE COURT: Well, I guess, let me ask a slight variation on that just in terms of the economics, right? So, I understand the mechanics of the plan. You say, well, Judge, that's a key component of the plan so if that's the pathway, then there's no approved plan. So, certainly significant distributions, but I'm trying to figure out the economics of what that would mean.

MS. VANLARE: So, again, difficult to say because we don't -- in that case, we would not have a plan. We'd have to go back to the drawing board, back to negotiation rooms and come up with an alternative. But I think in terms of -- if what you're asking is if we were then able to get the parties onboard and if we were to propose another plan -- and, again, we have no certainty at all that that is where we'd be able to be -- and you were to approve the NYAG settlement, again, under the terms of the settlement if there are distributions, the distribution on that claim would be consistent with the distribution principles as the kind of overarching global resolution among the creditor body.

THE COURT: All right.

MS. VANLARE: So, we -- I've spoken about 502(b). The other primary objection that DCG has propounded is that the plan was not proposed in good faith. Your Honor, frankly, we think given the record in these cases, the

notion that this was not proposed in good faith or somehow in breach of fiduciary duty is simply preposterous. As you heard Mr. Aronzon testify, the special committee which consists of highly experienced, highly dedicated professionals, met weekly, sometimes many more times than weekly throughout these cases.

There has been extremely broad participation in the case and in the plan process, including by DCG from day one. Mr. Aronzon's testimony --

THE COURT: Somebody's got a live line on Zoom and so please mute that or we'll mute it here. Thank you.

MS. VANLARE: I believe Mr. Aronzon testified that DCG has participated throughout these cases. DCG has also argued that there's no cap on creditor recoveries. I believe we addressed that earlier in response to Your Honor's excellent question on -- we do believe that there is a -- again, the plan provides for a waterfall, as is customary, and furthermore there is no "sham waterfall" -- there's actually a real waterfall with the distribution principles. And, again, Mr. Aronzon testified to that.

So, with that, Your Honor, I will now commence the main presentation and kind of go through in greater detail into these points. And I'll begin with the standing point. So, as I already mentioned, there are over 30 billion in subordinated claims asserted by governmental units standing

before there could be any distribution to equity. That's in Sciametta declaration, Paragraph 15, and in joint exhibit JX94, which has been admitted into the record. Those are the governmental proofs of claim.

At this time, those claims are deemed allowed under Section 502(a). The debtors' most recent cash and coin report that's dated February 29, 2024 showed an aggregate of approximately 3.3 billion in total assets as of January 31, 2024. That's at ECF1407. So, looking at the assets and the liabilities, the debtors are clearly insolvent.

Now, in the opening statement DCG made a big to-do about the claims asserted against each of the debtors, right? They said, well, it's not really 30 billion because you've got claims in there against each of the three debtors. Now, first, these are all prima facie valid claims. However, even if you were to essentially ignore two-thirds of that and only count each claim against a single debtor, we're still looking at about 10 billion worth of claims. So, again, 10 billion of claims, 3.3 billion of assets. We're nowhere near solvency. DCG, as a result, is out of the money and lacks standing.

The reinstatement point, which we already addressed briefly.

THE COURT: Well, let me back up one second.

MS. VANLARE: Sure.

THE COURT: So, what is your understanding of the law when assessing standing the level of certainty? So, the response I think that DCG had on one of the occasions was to say, well, when it comes time, we'll object to those as well. Now, I understand as a matter of common sense there's a certain -- it's $10 billion. We have this number of assets, we have this number of customer claims, it doesn't pass the common sense test. But let me ask you to delve more specifically into what the case law talks about for purposes of standing and recovery.

So, what's your response then to DCG saying, well, we could object to those claims and we would at the appropriate time?

MS. VANLARE: My response would be too late. We are here today to ask Your Honor to consider the approval of this plan. Confirmation concludes today -- we hope, today. If not today, tomorrow. We are here at the confirmation hearing so I think what is before Your Honor is the record that exists today. And today, these claims have not been objected to. So, I think as of today, we look at the assets and we look at the claims as they are.

The reinstatement under 1124, which we already discussed today, again, I think that the reinstatement under 1124 also highlights DCG's lack of standing to object to the

plan. And, again, I think the key point here is since DCG would have no recourse, no recourse to object if the debtors had reinstated the creditors' claim in full, it should not and does not have a basis to object to the distribution principles, which provide for something less than reinstatement.

THE COURT: Well, I imagine they're going to say that the Code says what it says. It doesn't say you can do a partial reinstatement; it says either it's a reinstatement or it's not. So, it's very much a Manichean black and white view of the world, so you're either in or you're out on reinstatement. So, what's your view about that?

MS. VANLARE: I think that would be an illogical and impossible reading of the Code. It cannot be the case that -- and, again, this is why I think it's tied to standing -- it can't be the case that if we had the sufficient assets to reinstate these claims, again, looking to the relationship between the creditors and the equity and what each is entitled to -- it can't be the case that if we have enough money to give all of the assets that were owed to the creditors, DCG has no standing equity, has to stand by and they have to let the creditors recover what they're owed.

However, if we owe our creditor -- if we're able to give our creditors just a little bit less -- and, of

course, here it's not a little, it's substantially less than what they're owed -- but, again, the absurdity of that reading I think is clear. If you imagine, well, if we had a dollar less than enough, then all of a sudden, oh, sorry, creditors, you don't get the benefit of your bargain and your claims are now reduced by, in this case, two-thirds.

THE COURT: So, in your view, is this where the principle of reinstatement bumps into the solvent debtor exception and all those --

MS. VANLARE: Absolutely.

THE COURT: Right? That you view these things holistically?

MS. VANLARE: Absolutely. And it is perfectly consistent -- and I think this argument is perfectly consistent with the solvent debtor exception, again, which I think is part of our argument, a really critical point of our argument that, again, bankruptcy case law and these various pieces are all consistent with the notion that I think is not surprising to any of us, that creditors come before equity. It's absolute priority, it's fundamental to the bankruptcy scheme.

As I mentioned, I think the plan is consistent with Section 502(b). First, because on their face, the distribution principles provide for a determination of claims as of the petition date. In fact, that was a

critical component of the distribution principles. So, you start by looking at the claims and giving a pro rata distribution as of the petition date, and that's ECF Number 1391, Exhibit A, the distribution principles. Again, this ensures that all creditors' pro rata entitlement is measured from the same point and in the same currency, which, if you look at the legislative history of 502(b), that's perfectly consistent with that.

And the cap, which, again, I previewed already. There's no cap in 502(b) as distinct from other sections of 502. Of course, we all are well aware of lease claims, 502(b)(6). We all know that lease claims are capped. There's simply no similar language in 502(b), there's no similar notion of a cap and 502(b) acting as a cap on creditor recoveries.

Finally, another point, which is that 502(b), if you look at the language -- and, again, there are many reasons why we don't even get there, but if we do, 502(b) only applies if there's an objection. Now, for months there were no objections. I know, of course -- and I know Your Honor knows that DCG, on the eve of the confirmation hearing, filed an omnibus objection to the claims. I think it's important to point out that that's not a valid objection. So, in fact, the language of 502(b) doesn't apply here. And, again, I think it's not surprising because

it really was never intended to do what they wanted to do here.

Why is it not a valid objection? It was filed as an omnibus objection under Rule 3007. In fact, the fact that claims are not valued in U.S. dollars is not one of the bases for an objection, for an omnibus claim objection. They relied on a claims order and a different section of that claims order that really only applied to debtor objections. So, that was not a valid objection. And, again, it's a technical point but it's not surprising because, again, the Code was never intended to do what they are trying to do here.

And, finally, this point that I made earlier that really we are giving people claims as of the petition date. It just should be viewed as having two parts of a claim: one for digital assets, one for damages that people sustained from not having access to the digital assets. That's equal to the appreciation that people have -- that the digital assets at issue, many of them, not all of them, have experienced during these cases.

Now DCG relies quite a bit on other crypto cases. They obviously cite Judge Dorsey's dicta recently with respect to 502(b). Our view is that those cases and Judge Dorsey's position during that hearing is really irrelevant to the issue we're here to discuss today. None of the other

crypto cases have tried to do what we're doing here. We have always said that what we would be doing is returning crypto assets to the extent possible, that we would be making in kind distributions to the extent possible. We have never said we would dollarize, and I think that's in stark contrast to what other creditors -- sorry, other crypto debtors have done.

So, Judge Dorsey -- this issue was never before Judge Dorsey and, of course, it is out of district. So, I think that -- Your Honor, I don't think that you need to be persuaded by citations, again, to cases which I believe are not relevant.

And then, finally, again, the solvency point. The solvent debtor exception I think is squarely consistent with our plan. And the solvent debtor exception is the notion that if a debtor can pay its creditors, that it should do so in accordance with their bargained for contractual rights and that the creditors are entitled to them before any recovery to equity. We think this exception appears clearly in the Second Circuit decision of Ruskin v. Griffiths at 269 F.2d 827. It is wildly accepted throughout case law and certainly in this circuit and in other circuits, both in cases under the Bankruptcy Code and the Bankruptcy Act.

THE COURT: So, and I'll ask the same question to DCG when they come up. In your view, is it -- is your

argument to say that -- okay, putting aside the question of solvency, Judge, either it is appropriate for you to look at the world this way: if the debtors are not solvent, which is our contention, then DCG's out of the money; if they are solvent, DCG can't recover until everyone gets their contractual rights?

MS. VANLARE: That's exactly right. For the same reason --

THE COURT: But I guess my question is, is that kind of Schrödinger's Cat? You know, whether it's alive or dead, that you think it's appropriate for a court to use that kind of analysis in a circumstance like this.

MS. VANLARE: I do think so, Your Honor. I think that you can look at it -- and, again, because under the circumstances of this case, again, we think the evidence is what it is. The claims are valid and so we're insolvent clearly and indisputably, frankly. But, again, their argument primarily is that no, wait a second -- and they say this in their pleading -- the debtors are solvent. And what we're saying is if that is true, what we are doing is entirely consistent with what the case law would dictate in that circumstance.

And then lastly on the solvent debtor, so DCG's efforts to restrict payment of post-petition interest to the federal judgment rate also fails. We think that there is

significant authority, which we cited in our papers that, again, consistent with the principle that creditors are entitled to the benefit of their bargain, we think that as a result, the contract rate is fair and appropriate. And that's what the plan and the distribution principles propose to do, which is to give creditors what they're entitled to under their contracts and not limit them to the federal judgment rate.

Next, I'd like to address the good faith argument in more detail. So, under the Bankruptcy Code, the debtor -- and case law, the debtor is required to act with the requisite care, disinterestedness and good faith in negotiating a plan. Your Honor, the debtors have absolutely met that standard here.

In terms of the record before you, we think that testimony from Mr. Aronzon, from Mr. Geer, Aronzon declaration Paragraphs 11 through 58 and Paragraphs 103 through 105, the Geer declaration Paragraphs 13 through 26 and 43 and 44, the Sciametta declaration, Paragraph 13, and voting report at ECF1295 all support the debtor's good faith.

In terms of the various components, the plan was clearly proposed in good faith. Again, there is ample evidence in the record, in the declarations and in testimony that the plan is the result of months of good faith arm's

length negotiations between the debtors and a wide, wide range of parties in interest in these Chapter 11 cases. These have included, of course, the Committee of Unsecured Creditors, the ad hoc group, which consists of both dollar and crypto creditors, the dollar creditor group, represented by Pryor Cashman, which is here, and many other parties in interest. And, of course, last but certainly not least, because, as I mentioned, they have been there from day one, DCG and their counsel.

We have negotiated multiple deals, multiple plans, we have been hand-in-hand with creditors and parties in interest trying to get to a resolution that is consensual.

THE COURT: Well, I don't want to be dissenting for a second but, I mean, isn't -- there was clearly points where creditors were profoundly concerned about some of the things the debtors wanted to do, but those involved potential pathways with the parent.

Am I missing something that the record -- I mean, I think that does seem to be relevant. In other words, this is not the first plan. There were other ideas, and some of them involve reaching resolutions with the parent, and after -- which clearly were -- I don't think anyone had said those were not good faith negotiations between the debtor and the parent, but the creditor body basically said, you know, to quote Hamilton, "You don't have the votes." We're not going

to let that go.

I mean, am I missing something saying that's relevant to the issue --

MS. VANLARE: No.

THE COURT: -- of good faith?

MS. VANLARE: You're absolutely right, and you're exactly right in terms of what's happened. That's happened more times than we would've wanted, but, yes, Your Honor. We had the famous February term sheet where we thought we had a deal, and that was -- subsequently fell apart.

We had then a formal mediation, multiple rounds of formal mediation. We had actually filed what we affectionately know as a no-deal plan, the original no-deal plan when we first filed for bankruptcy. We then had the February term sheet. We had multiple rounds of mediation. We filed another no-deal plan in June.

We then -- following again months and hours of negotiation over the summer, we reached an agreement in principle with the creditors committee, and we couldn't get there with the ad hoc group, and so that fell apart.

We then had a toggle plan where we thought we would have -- put before creditors a proposal that included a deal with DCG and that included a no-deal option, and again, we just were never able to get there due to a number of circumstances, including an NYAG complaint and inability

to reach agreement on some final terms with the parent, with DCG.

We then filed the plan that was sort of the main precursor to what's before you today, the no-deal plan, but that was widely supported by creditors in the fall, and that has -- over the course of the last months has seen additional tweaks and iterations as we've tried to get more and more parties on board and have worked out more and more issues.

So it's been -- it's been an extremely busy and involved process. Again, that's included many, many parties with widely divergent views as to how the assets should be distributed, which is why, again, I think it's quite remarkable that we've gotten as far as we have and our here today with a virtually entirely consensual plan, again subject to the two objections.

So as I mentioned in terms of the evidentiary cites, which I think are important, again the plan is supported by all creditor constituencies. Not only is that evident from the parties that are supportive here in the courtroom today but also the voting report at ECF 1295.

And DCG has argued that it, again, this idea that it was somehow excluded from the process. We think that's entirely wrong and not supported by the record.

DCG has participated at every step. And again,

that's evident from the -- Mr. Aronzon's declaration, Mr. Geer's declaration, and Mr. Aronzon's testimony during the hearing when asked about DCG's involvement. He said that this is a very hard question to answer because, honestly, DCG has been involved daily, weekly, and monthly. They're well repressed. They have great financial assistance. They're very smart guys, and they climbed all over every issue in this case, and then some. That's what's in the record.

And again, as we've already addressed but I'll just provide some evidentiary cites. In terms of -- you know, I mentioned of course there's the waterfall in the plan that says that equity can recover once creditor claims are paid in full, but also in terms of whether it's possible for there to be distributions following the distribution to unsecured creditors pursuant to the distribution principles.

Again, Mr. Aronzon testified before you. That's on February 26th at page 207. He said that if crypto prices were to drop, then -- and other assets are monetized or valuable, including the litigation recoveries, we'd probably hit an endpoint on the claims being paid. And if there was anything left after that, then yes, it would flow down. So again, that's in the record.

Next, in terms of the good faith, the setoff principles filed by the debtors as Exhibit M to the plan

supplement. These were put together in consultation with creditor advisors, with -- sorry. With debtor advisors, and with just -- in discussions with creditor advisors was meant to address the claims of creditors that are subject to the debtor's rights of setoff and a recoupment.

They -- DCG's argument that they were created to engender support for the debtor's plan from a select group of creditors is simply -- is not true, and I think it's clear that, again, if you look at the voting report, we have overwhelming support from every class of creditors, so the idea that we needed this to support our plan is simply belied by the record.

And also, I would point Your Honor to Sciametta declaration, Paragraph 13, for the fact that the setoff principles are consistently applied to the creditor body.

Finally, DCG asserts that the plan was not proposed in good faith because it contains a number of provisions with which DCG disagrees. We think that that profoundly misstates the good faith standard. The law is clear that, again, that the good faith standard does not permit courts and other parties to second guess a debtor's business decisions, and we think these objections all fail, but I'll address them briefly.

The plan is effectively a liquidating plan, and the wind-down debtors will exist solely for the purpose of

making distributions to creditors. In an ordinary liquidating plan, the former equity holders would have no interest in the debtor's post-liquidation. Now, the plan does have certain provisions relating to the fact that the equity will stay where it is. Again, this is done for administrative and for tax purposes, and in the event that the creditors are paid in full and rendered unimpaired, the plan provides that, again, DCG's rights would spring back.

Some of the other arguments that have been made that I will address --

THE COURT: Let me ask you about the Chapter 7 principles. Right? We're in a liquidating plan. There are rules about what happens in a Chapter 7 liquidation, what happens when all creditors are paid. But being in an 11 liquidation, how relevant or not relevant are those principles?

MS. VANLARE: So Your Honor, what I was speaking to really had to do with Chapter 11, liquidating plans. I think there are many plans of Chapter 11 liquidating plans where --

THE COURT: Oh, I'm not -- I'm not -- yeah. I guess let me ask a better question.

MS. VANLARE: Mh hmm.

THE COURT: As I understand it in seven, if all creditors are paid, the money goes back to the debtor, and

the debtor can -- so the idea is -- at that point, I think a debtor could pay creditors who haven't been -- didn't get the full contractual benefit of their claims. And I'm trying to figure out as a matter of policy whether Chapter 7 liquidation principles are at all relevant or irrelevant here.

MS. VANLARE: So I think what I would say to that is I think the structure of the waterfall obviously is important, and we've respected the structure of the waterfall. So I think the way I would describe our plan is that the structure is there, and it's -- it's the right one, and it has the typical waterfall.

I think as a matter of, again, the record and the factual circumstances, there simply aren't enough assets to flow down, but the structure is there, and I think that speaks to the -- to the good faith, one of the many things that speak to the good faith of the plan and its proposal.

A nice segue to my next point, actually, which is the best interest test. That was raised by DCG objections, so I'll address that next. Again, I would point Your Honor to the Sciametta -- Mr. Sciametta's declaration in Paragraphs 19 through 24 that discus the liquidation analysis and why we believe that the plan meets the best interest test.

DCG is the only party in interest that has

objected on this ground. And again, given as I've already described and the cites to the record, DCG is not entitled to any recovery, and so the distributions to equity would be zero in a Chapter 7 liquidation just as they are here.

They make other arguments with respect to how the plan purportedly harms their rights as equity. Again, we think all of them lack merit. There's a point about indemnification and sort of selective assumption.

As we argued in our papers, we actually -- we don't think that's appropriate. There was no selective assumption. But in any event, that's been rendered moot by the amended plan that was filed on February 15, which removes from the defined term indemnification obligations, any reference to the debtor's existing corporate governance documents such that, again DCG's objection really is no longer relevant.

There's a point around subordination. The plan provides a reservation of the debtor's or wind-down debtor's rights to subordinate DCG's claims. That's all it says. It's a provision where we reserve our rights.

Tax sharing agreement. The plan in fact --

THE COURT: Let me back up on that in terms of corporate will -- said reserve the rights. What does that look like in terms of exercising those rights in the future? What would that --

MS. VANLARE: I --

THE COURT: -- process look like?

MS. VANLARE: I think the way that we had envisioned it is we could -- as part of the claims resolution process, if we determine that it was appropriate, we would seek to subordinate them, and that would be subject to a motion before Your Honor. But at this time, that hasn't happened.

THE COURT: Alright.

MS. VANLARE: Tax sharing, again, the plan does not compel DCG to enter into plan-sharing agreement, so we think that objection fails as well.

There's an objection to the payment of the ad hoc group and the dollar group fees, and I'll note that this is -- this is an objection raised by DCG. It's also an objection raised by the United States Trustee, so I will address that point here in the context of a response to DCG, but again, I note that this may come up later in our discussion with Mr. Zipes.

So our view is that the proposed payment of the ad hoc group restructuring expenses and the dollar group restructuring fees is consistent with the code. Courts in this district routinely confirm plans providing of such payment if the fees were instrumental to the plan, which we absolutely think that the actions of these ad hoc groups

were instrumental.

In the alternative, the ad hoc group restructuring expenses and the dollar group restructuring expenses and fees meet the substantial contribution standard for allowance under Section 503(b). We think that each group -- and we believe the evidence is clear that each group meaningfully participated in the development of the plan. Neither provided services that were duplicative of another nor of any other party in interest. And again, their efforts were truly instrumental in trying to get us to a consensual resolution among the creditor body.

And in terms of the evidentiary record, Your Honor, I would point you to the Aronzon declaration, paragraphs 59 through 64, 107 through 108, as well as the testimony that Mr. Aronzon provided on February 27th. That's at pages 89 and 90 and then 92 where I think he very clearly testified that the participation of, in that case, the ad hoc group was instrumental to the -- to the plan and to where we are today, and I think those same arguments would apply for the dollar group.

THE COURT: From the debtor's point of view, it appeared to me that there was a more developed record as to the ad hoc group as opposed to the dollar group just given the -- I think it was questioning of Mr. Aronzon done by the ad hoc group, and so let me -- you may have a view on this.

You may not. Do you have a view about the state of the evidentiary record in terms of substantial contribution as between those two groups, or that's not really your fight, and you'll let others speak to that?

MS. VANLARE: No, we are -- we are very supportive of the fees being granted to both groups. I think that the evidentiary record is more than sufficient for both groups.

I think that the ad hoc group played an integral role, as I think Your Honor saw their participation throughout these cases. The dollar group really -- we can't say enough about how critical their participation has been. They represent the ad hoc group. Obviously, an enormous potion of the creditor body is represented by the ad hoc group. Their -- they have both digital and dollar creditors. The dollar group is really an important voice representing only the dollar creditors and were critical in the negotiation of the distribution principles. And again, that was a negotiation among many parties. But principally, you've got digital creditors and dollar creditors which had divergent views as to how the distribution mechanics should work. And so both groups were critical.

In terms of the evidentiary record, yes, we had Mr. Aronzon's testimony and response to Mr. Rosen, but we -- you know, his declaration which of course is also in the record does address their contributions. And again, we

think that both warrant the payment of their fees.

THE COURT: Alright. Thank you.

MS. VANLARE: Finally, I'll just touch on the distribution principles and the fact that we believe they should be approved and meet the requirements of 9019 as a settlement. As I -- as I just mentioned, it was a robust negotiation. You've got dollar creditors who gave up parts of what they had been arguing for. Crypto creditors gave up the argument that they must be paid in full and kind. It was a compromise that was forged after a tremendous amount of work by all of the parties. We think that the Iridium factors are readily satisfied.

And again, in terms of the evidentiary record, we'd point Your Honor to Mr. Geer's and Mr. Aronzon's testimony during the hearing, Mr. Geer's declaration, Mr. Aronzon's declaration. I won't go through the Iridium factors, although I'm happy to do so, but I do think that just broadly speaking, the litigation factors that look to the balance between the litigation's possibility of success and settlement's future benefits, and the likelihood of complex litigation, we think that factor weighs in favor of approval.

As I mentioned, of course, there's well-represented and very active parties on all sides. You see that even today with the McDermott group of crypto creditors

that are pushing for an in-kind claim recovery, and that was one of the positions that was compromised in the distribution principles.

We think that the distribution principles benefit the debtor's estate by resolving consensually these opposing views in what is an untested area of the law. We think that the interests of the creditors factor is met for all the reasons that we said. It was -- again, the distribution principles are the result of extensive negotiations. The breadth of support again is evident both from the declarations by Mr. Geer and Mr. Aronzon that have been submitted and the voting resort. That's at ECF 1295.

And the remaining factors in terms of the competency and experience of counsel we think is demonstrated, and we think that, again, the evidence is clear that the settlement is the product of arm's length bargaining, and that's in the record.

Your Honor, at this point, I -- this concludes my prestation on DCG's objections. Of course, we'll reserve our rights to -- for rebuttal, but I would ask that Your Honor overrule their objection for all the reasons stated. And at this time, I will cede the podium to others who wish to speak in support of the debtor's position on this point. Thank you.

THE COURT: Alright. Thank you very much.

Let me hear from the official committee.

MR. SHORE: May I approach, Your Honor?

THE COURT: Please.

MR. SHORE: I have a presentation as well. I want to note I'm not going to put it up on the screen, and it's going to -- it really just should be looked at by people who are under an NDA right now. I don't think I'm going to discuss anything that is confidential. I just didn't want to run afoul of the existing protective order and where we are on the sealing.

THE COURT: Well, we're going to walk through it, so the content will be communicating to all of us.

MR. SHORE: Correct.

CLERK: Can you please state your name for the record?

MR. SHORE: Sure. It's Chris Shore from White & Case on behalf of the UCC.

Let's start on Slide 1, and this is what I'm going to focus my -- all of my comments on today, really.

What I see as the central issue of this confirmation trial, which is how does one go about determine the allowed number of crypto-denominated claims for distribution purposes? There's no argument here that dollar-denominated claims are getting something more than they should or anything else. They're getting par plus

accrued to the extent the debtors have the ability to do that.

So really what I see is there are two ends of the spectrum. On the one hand, you have DCG arguing that the only way the Court can do it -- your hands are tied -- is petition date pricing, and with that come associated concepts of 502 capping, equity surplus, full rejections of the contracts. I'll turn to that as well today.

And on the other side, you have the CCAHG [ph.] who insists that the Court can only allow claims using current pricing. And with that comes concepts of restitution, shortfall, and total nonconsensual reinstatement, and even administrative expense priority.

Between those two extremes, the overwhelming majority of creditors -- really all but eight, or maybe seven, or maybe six now, whoever in the ad hoc group -- said, "We don't want to litigate those issues. We understand that there is a range of possible outcomes of that issue," and they have said, "We don't want to litigate it. And we as the UCC, as fiduciaries for the creditors are fully supportive of them. We fully see the benefit of settling that issue in what I'll get to is really a form of restitution-lite, which gives them everything the debtors can give without undertaking the obligation to return everybody's coins.

And that resolves a thorny set of issues involving 502, 562, how to treat fraud claims, the debtor's business judgment in all of this, the absolute priority rules.

And the reason we know the issues are thorny is because you have two parties here objecting today who are 100 percent certain that their position is right and want the Court to deny confirmation because they are so certain that their legal position is correct.

But that's not what the creditors want, and I don't think it's fair to say that every creditor must have the Court flip that card over and come to a determination as to the proper way to do this in order to get their distributions out.

And the reason it's an oblong on the settlement is something that I wanted to highlight for the Court if we turn to the next slide, page 2. What's here is the first page of the coin report which was attached to the disclosure statement at Plaintiff's Exhibit 1. And it shows you two things.

For all DCG's talk about the appreciation of Bitcoin, which is what they're really talking about, Bitcoin at the time the deal was cut and solicited was at 26,000 as opposed to 21,000. So it does seem a little bit unfair that when the -- when the deal was cut and people agreed to the distribution principles, the market was saying at that time

it's just as likely it's going to go up as it's going to go down, and there's no surplus there. So it does seem, as I said, a bit unfair for DCG to be protesting, well, now that it's gone up, we have to have people recut the deal.

The other thing to point out is that not all coins have appreciated. Everything in yellow there were coins that had depreciated or declined in value since the petition date. And if you were a holder of these coins, you were asked under the bar date order to list the coins you were claiming and coin denomination, and lay it out.

And the reason we did that is something I said at my first appearance in this case. Crypto creditors want their coins back regardless of the circumstances. As crypto creditors will say, "I'd rather just have my Bitcoin back rather than a dollar-denominated claim. That's tied up in the appreciation or love of the asset. It's tied up in issues of tax and everything else. This is a coin-return plan.

And for somebody whose claim has -- or the coin has declined in value, that has a real economic effect because under DCG's argument, they would not be paid in full until they got that petition date pricing in the right column whereas what they've agreed to -- or sorry, in the left column -- and what they've agreed to is the -- no. I got that wrong. Let me pause.

Under the plan, if you denominated one coin and that coin fell, you are -- your claim is capped at the current price, not at the dollar denominated price. So you are not -- you are paid in full when you get that coin back. So in the most extreme example, under this plan, if Bitcoin had fallen to $10, every Bitcoin holder who denominated their claims in Bitcoin could be repaid in full by the debtors going out and buying $10 Bitcoins and distributing it to the creditors. But where we were at the time this deal was cut was a fluid market in which people were advised and disclosed pursuant to an approved disclosure statement and told, "This is what you're going to get under this plan."

So let's turn to Slide 3. DCG's objection, that is that the Court must -- 100 percent certain the Court is constrained to apply 502(b) fails for six reasons: waiver, standing, claim objection point -- and I'll go through each of these points in turn, Your Honor.

Let's deal with waiver of Section 502(b). It seems like there was some -- and we're going to be on Slide 5. Seemed like there was some confusion at the closing of the record on the ad hoc -- or sorry, the New York AG settlement as to what was said in opening with respect to mooted arguments.

And if you look at the first highlighted point

down on the bottom there on page 120 in the transcript, Mr. Saferstein said, "I think if the settlement is approved and then this Court were to approve a plan that dollarized the claims, then effectively all the excess value, the estate would -- the estate -- of the estate would be rerouted to creditors and make those arguments moot."

And then you quite rightly pointed out because he said, "And then this Court would approve a plan." You said, "No, actually, that's not my question. My question is this. What I thought I heard them say is that if I approve the settlement first, then it moots your confirmation objection." My understanding is that's not something you would agree with, and if you look at the highlighted section at the bottom, I think it actually does moot our objection to the plan because then if they propose a dollarized plan, settlement payment effectively incorporates distribution principles, which you would be overruling, and reroutes the money to creditors. It's the same effect.

When this trial started, DCG said, "What we don't need to consider is a world in which the Court approves the settlement and then reaches the 502(h) issue differently," which is why I didn't ask -- of all the scenarios I asked Mr. Verost, I did not ask him the scenario of what happens if the Court approves the settlement and does not approve the plan because that was a scenario that was taken off the

table.

So I think the Court would be perfectly appropriate if you approved the New York AG settlement to say at the outset, I don't need to get to the 502 issues because I was told before the evidentiary record opened that that issue would be moot.

So let's go to Slide 7 and deal with the standing issue, which is the next hurdle they have to come to before we get to whether or not they're correct that 502 ties this Court's hands.

There are really three kinds of standing, and I think some of the arguments keep slipping back and forth. There's obviously statutory standing, that is are you a party in interest under the code who can appear and be heard? There is constitutional standing: Are you an aggrieved person? And three, there is jurisprudential or prudential standing.

What we've all really been arguing and why I think the questioning has come out the way it has, has been on prudential standing. The courts are clear just because you're a party in interest does not mean you have a roving ombudsman role to come in and object to any plan provision that you think runs afoul of the code. You have standing to affect the plan provisions which affect your economic interest.

And if you look at the cases, what they're really getting at is, is your ox being gored by this particular plan provision? And if it's not, you don't get to come in and ruin the plan just because you have a theoretical intellectual exercise you want to perform with respect to a plan provision.

The record is clear here that DCG's ox is not being gored by the way the plan allows and then treats the crypto-denominated claims.

If you turn to page 8 of the exhibit, I just -- actually, I didn't even have -- because I really am math challenged -- if you take out the duplicate claims -- Ms. VanLare said 10 billion. It's $11.2 billion of claims that are found in JX-94. Those are the parties whose ox would be gored if what ended up happening here is there were spillover or surplus value. There's $11 billion of claims that have not been objected to, and I'm going to get to the check-the-box exercise in a bit. There's not even a check-the-box on this. There wasn't even a purported omnibus objection filed with respect to the subordinated claims.

But their ox is being gored, and far from raising objections, there are subordinated creditors like the New York AG who are supporting the plan treatment which provides a reinstatement like getting as close to restitution as the parties can, and that's, quite frankly, why the UCC is here

supporting it as a fiduciary for the subordinated creditors and the general unsecured creditors. It's the fair result.

So -- and let's get to a question Your Honor asked. What about a hypothetical objection in the future? 502(a) is clear. It's deemed -- as of the record today, it is deemed this way. There was no evidence put on that in the future there are valid objections here and we'll get to it, nor is DCG underwriting the process of keeping this case open or their equity option open while we litigate those claims. This is the confirmation evidentiary record as it exists today, an $11 billion-plus hurdle.

And then if you go to the next page, slide 9, as of the confirmation hearing and the closing of the record, Mr. Verost gave you a figure. This is the one I think might've been redacted, so I don't want to get -- he gave you a figure. That's the amount of spillover that would occur if we dollarized all the claims on the petition date according to his analysis. That's nowhere close to meeting the hurdle.

So from a prudential standing position, don't think DCG has the ability to come in and object to the plan provision which doesn't distribute that value to them. That was somebody else's ox being gored.

Now, I do want to make clear that there are many problems with the Verost calculations. Most fundamentally,

he violates what I said at the opening was the one plan and the only one plan rule. Under this plan, there is no excess value. The debtors have a shortfall. His assumption that we call it a surplus assumes that if the Court found that 502 acted as a cap on non-dollar-denominated claims, there would be as much as this highlighted amount in surplus to be distributed to equity in the hypothetical Plan X that I crossed him on.

But as he acknowledged on cross, he just assumed that by the time we got from a denial of confirmation here to the confirmation hearing on Plan X, the crypto prices would hold static, that the subordinated creditors would either vote to support that plan or had their claims reduced to less than the hurdle, that there were -- he assumed there were zero re-organization costs between here and the confirmation hearing of Plan X, the debtor's assets -- which aren't appreciating. It's just a pot of assets -- are not going to be depleted by all the re-org costs of getting to that Plan X confirmation date. And he just assumed that there would be no conversion or dismissal of the case.

In sum, I'm not -- I think his conclusion with respect to the upper limit of excess value is not reliable in any way.

So let's assume that the Court finds that the plan objection, the 502 issue on the ends of the spectrum is not

moot, and that DCG is at least enough in the money that you're going to find that as a jurisprudential matter, they have standing to object to the treatment of crypto-denominated claims. And if we --

THE COURT: Well, let me --

MR. SHORE: Yeah.

THE COURT: If I'm --

MR. SHORE: Sure.

THE COURT: Before I lose the thread.

MR. SHORE: Mh hmm.

THE COURT: So when thinking about what, in your view, has been put in play in this case and what hasn't, the -- what you just highlighted is the argument of excess value. DCG says there's excess value. Where's it going? Should go to us. You have the $11 billion that you highlighted of the subordinating claims of the government -- various government agencies.

Is there -- in your understanding, and I'll ask DCG this as well when they come up. Is there any other objection that you're aware of that DCG has to the recovery of creditors other than that excess value argument? In other words, I don't know that I've heard anything else that says there's a problem of the calculations or a problem with entitlement, what the single defining issue is. Do you value it at petition date, or do you value it at

distribution date?

MR. SHORE: It's not -- it's not even do you, do it? Are you constrained by the law to do it only one way with the ad hoc crypto group on the other side saying, "No, you're constrained by the law to do it exactly the opposite way"? And the creditors are not permitted to settle that issue. That is, they are so correct that nobody can get the settlement they want, notwithstanding all the benefits of it, notwithstanding the creditors' support for it. You must determine this issue as a legal basis right now.

And as I said, and if you do it and it blows up the plan, well, then so be it. That is creditors are forced to litigate the issue. It's not just should you do it this way, but you must, and therefore you must deny confirmation.

So let's get to dig in on their 502 argument, which I think is the sole basis for objecting to crypto-denominated claims treatment.

Mr. Saferstein was candid at the opening as well. They tried to check the box so that they could not -- they being us -- not raise a technicality that they hadn't expected. Well, first of all, it's not a technicality. It's what is the predicate to get to Section 502(b) is that such objection is made.

And that's important, right, because think of it in a big case like this. If you didn't have the deemed

allowed rule and the debtor was forced to come into confirmation and establish the actual amount of claims, it becomes completely unworkable. It is a tool that helps Your Honor from having to have that kind of evidentiary record.

So the question is what is an objection? An objection is not defined in Section 502, but as Ms. VanLare pointed out, it is defined in the bankruptcy rules. And if you turn to page 12, they run afoul of three provisions of Rule 3007, which would say that on its face, it is not a valid omnibus objection.

First of all, they're trying to use an omnibus objection. That is an objection to the claim of every single creditor who filed a crypto-denominated claim as required by the bar date order on a substantive basis. That is that their claim is capped. Omnibus objections can't do that.

Second, it cannot contain more than 100 objections to the claims. This contains hundreds. They just said, "To the extent anybody filed a crypto-denominated claim, we're objecting."

And third, they didn't list who's affected by that objection. You've got to -- you've got to. When you file an omnibus objection, you've got to clearly show, "I'm objecting to proof of claim 347." They did not do that. So the check-the-box -- they couldn't even check the box with a

valid claim objection, so I don't think they even get into Section 502(b).

And this is -- look. At this point, you know, interesting to hear their argument because I'm not sure that I quite understand what was said either in opening or in the -- in their brief, but let's kind of pick it apart.

I think what they're saying is if the Court allows a crypto-denominated claim with the possibility of restitution, that runs afoul of Section 502(b). That is Your Honor is constrained to do what they say.

That's wrong, and I think we get there two ways. One is that the solvent debtor cases, Chemtura, is probably the best one on that, which talks about the role of the Court is to enforce creditors' contractual rights. It shouldn't be a gotcha. And I think their response is, "Well, wait a minute," that we're talking about code impairment. And I'm going to come to the code impairment cases. They don't cite any of them. I'm not sure they're going to cite them today, but I think, really, that's where their argument is.

So we can -- let's go to the next slide. Let's be clear about this, and I think I put it here for a reason. The record needs to be crystal clear on this. There is no situation under this plan in which a crypto-denominated claim gets more than their contractual entitlements.

Period. The end. This is not somebody getting paid more than what the debtors promised them. They are getting paid less than what the debtors promised them.

But I think what DCG is getting at are the code impairment cases. You think about a solvent debtor who tries to use 502(b)(6) and reject leases, and nonetheless make an equity distribution, or the make-whole cases in which the debtors seek to disallow unmatured interest but nonetheless make an equity distribution. And creditors from the perspective of a UCC lawyer go rightly insane when that happens, saying, "How can you possibly do that to me? That's not fair. I'm not getting the full entitlement -- contractual entitlement."

I think that gets answered two ways. One is that I think it ultimately comes down to the debtor's business judgment. And two, 502(b), the lead-in does not act as code impairment.

If you turn to slide 16, the lead-in to 502(b) has two purposes. It has a functional purpose, and then it gets to the limiting purpose. The functional purpose comes with the Court determine -- determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and that allows people to speak the same language for the purpose of running claims analyses and a claims register. It allows people to compare apples and

oranges.

And then it says, "Except to the extent that," and that's where you get unmatured interest and lease rejection claims for more than two years. And what the code says is there, the Court is constrained to not allow the -- what the -- is specified there.

Now, I'm going to stop here because I said the debtor's business judgment. That does not mean that a debtor must reject its contracts and clip them for -- or its leases and clip them, nor must it fight a make-whole. A creditor files a claim for a make-whole and the debtor doesn't object, then the make-whole gets paid. We don't ever get to the issue of unmatured interest. There's nothing wrong with the Court approving a plan in which the debtor decided not to object to make-wholes, and nobody else objected to make-wholes, any more than a debtor is prohibited from assuming a lease of nonresidential real property, and curing with years of unpaid rent.

But fundamentally what DCG -- the only argument that DCG would have to say the Court is prohibited from allowing this treatment would be if you rewrote Section 502(b). What they're really saying is 502(b) says, "If such objection to the claim is made, the Court after noticing the hearing shall allow us such claim in such amount except to the extent that new subsection 1, the claim is a non-dollar-

denominated claim, and the allowed amount exceeds the dollar value of that denomination as of the petition date." It does not require you to clip the claim.

They are rewriting Section 502(b), the lead-in to say that under no circumstances may a Court allow a claim for restitution because that's really what we're talking about here, which are the rights of the creditor to receive more than -- more than what is dollar -- what their dollar denomination would be on the petition date. If that's what Congress had wanted, they could have written that with a new Subsection 1. It said very clearly, "You must disallow a claim that exceeds the dollar -- non-dollar-denominated claim that exceeds the value of the denomination as of the petition date."

And as proof that they're doing it, they hadn't cited a single court that has said that their reading is correct. The best they come to is Judge Dorsey's decision in FTX. So if we go to the next slide, I want to just draw Your Honor's attention. They quote one portion of the transcript that says, "My hands are tied." But the lead-in -- the lead-in is the Court's being told the plan on file is premised on providing U.S. dollar recoveries to creditors, and therefore necessary for the claims to be dollarized.

What's being explained is the business decision for why in that case the debtors were objecting to claims

that were denominated in coins, and that makes -- it makes an -- it is an appropriate business decision to say, "You know what we're going to do? We're going to clip the claims," because otherwise they have a mismatch of assets and liabilities. Their -- they have a plan which is providing dollars to people, but their distributions are going up and down depending upon the value of the claims, so they just unloaded their crypto.

That's a business decision, and I can see why Judge Dorsey under that circumstance would say these debtors have exclusivity. That's their plan going forward. That's what we're going to do.

The debtors just made a different business decision here that they weren't going to do that, that what they were going to do -- and I'll come to the basis for that business decision in a bit. They were not going to be availing themselves of 502(b), objecting to the claims on a claim-by-claim basis, and then distributing out dollars.

Our -- this plan has been from -- again, in my first appearance in the case, people want an in-kind plan here. They want their coins back. That was the fundamental bedrock of all the negotiations that occurred was that we were going to have an in-kind plan.

Now let's get to that treatment when we talk about the business decision of the debtors here to do something

different. And you asked a question about authorities on this. If you turn to page 19, part of this -- part of -- part of the argument seemed to be that the debtor can't do reinstatement-lite. That a -- if a debtor proposes to reinstate a class, it must tick through the 1124 factors, and only if every 1124 factor is filled, that is an appropriate treatment.

That's not -- if you look at Frontier, Judge Drain's decision, a reinstated party can agree to less. Obviously. Same way a party whose contract is assumed can agree to assumption-lite. However many creditors are in the ad hoc group, they are the only ones who say we don't want to be reinstated, and I'll come to that probably this afternoon as to whether that's their position or not.

But reinstatement-lite is permissible under the code because everybody can always agree to a lesser treatment than what the code provides. The question is does DCG have a roving right to object to the treatment of the crypto-denominated creditors who are agreeing to something less?

The closest case we can find -- but it's good because it's a Seventh Circuit case -- says -- it's a prudential standing issue. A party whose ox isn't being gored can't just object to a contract assumption on modified terms. The debtor and the non-debtor contractual party are

agreed to do less than full reinstatement or full assumption.

So really, I think, the question is what is the debtor's business judgment? What are the reasons that the debtors decided in this case, why are we going to give the crypto-denominated claims better than what 502(b) under DCG's ruling would require but less than impairment or full reinstatement?

In addition to the many reasons that Mr. Aronzon laid out, I want to add one other reason. The reason that we're doing what we're doing under this plan and why the New York AG is agreeing to what they agreed to, it's the right thing to do.

In a case like this, the Court doesn't need to find that there was fraud, but you know that the allegations have been out there. You know the views of the creditor body. I'm sure you've gotten e-mails of the views of the creditor body about the many crimes that occur. In the context of a case like that, getting people back what they -- what they were entitled to is the morally right thing to do, but it's also good for DCG as we pointed out in the testimony.

Every coin that gets returned to customers is a coin that isn't the subject of the New York AG's action against DCG. And I don't think there's anything in the

record that says that the debtors failed their business judgment in proposing a plan with a claim's treatment supported by all the creditors because they should have shown an unfailing loyalty to DCG and done everything they could to get an equity distributor.

THE COURT: And let me ask you -- I think I've already asked this question, but to the extent there's any daylight left, you understand that the objection of DCG is to the concept of paying this post-petition value, what they call the excess value, and it's not on the basis of any calculation that this is what the customers would be entitled to get if they got the full benefit of their bargain?

MR. SHORE: Correct. Because the plan solves for that. It just leads the distribution. Waterfall ends when they have received the full benefit of the bargain, but they have not said, for example, that the calculation of the coins -- that is, if someone filed an inappropriate proof of claim, claimed too many coins or anything else -- or nor have they attacked the actual filing of crypto-denominated claims. That issue was resolved when the bar date order was approved without objection from them requiring the parties to list their coins in their -- in their claim form.

But this concept that somehow the Debtors are doing something wrong here really gets ultimately

encapsulated in their --

THE COURT: I'll ask DCG this, but again, my understanding of their objection is that it's improper to do this as a matter of bankruptcy, but if you were to pretend there was no bankruptcy at all, and you went to a federal court and said, "What am I entitled to? What am I -- what are my breach-of-contract damages?" that's what the -- this is all designed to look at on your little chart in terms of settlement in different --

MR. SHORE: You're asking me the question. They did not preserve that objection, Your Honor, not in their papers. Had they put it in their papers, we would've responded to it.

One of the things they did put into their papers was that this was a bad faith process, so we responded. If you look at page 23, more for visual purposes not because we want anybody to read that, we put in page after page from Mr. Geer on the negotiation. Oh, 21. Even with glasses, I can't read anything. Page 21.

We put in page after page of testimony from Mr. Geer on the negotiation process, constrained as we were by 408 and mediation rule, but the process was laid out there.

DCG asked Mr. Geer not a single question about this, nor did they ask him a question or even respond to the fact that DCG, because of the blowout provisions, and, well,

because another one was -- I guess it was -- both of them were the blowout provision. You have two term sheets in front of you, Your Honor, that DCG was supportive of, the prepetition one and the deal in principle from August. None of them had caps on crypto-denominated claims that said you can -- I'm willing to do this deal, but let's be clear. The moment a crypto-denominated claim exceeds the dollar value at the time of the petition, you're going to have to have that disallowed.

And I raise that for the important --

MR. SHORE: Would you remind me, what do they actually say? I mean, is there anything -- I understand your point that they don't have a cap, but do they affirmatively say under those term sheets what was contemplated? Is there any language that's particularly enlightening?

MR. SHORE: What was -- what was contemplated was that creditors would receive -- it would be distributed the value of what was being provided by DCG. There was nothing in -- first of all, there's a TBD on the -- on the distribution principles. That is how that value will be distributed. But there was no concept that what DCG was going to do was retain its equity option and that if at any time crypto prices rose to the extent that they could profit from the use of Section 502(b), that was -- that was not in

there.

And I don't raise that because, you know, the obvious answer is, well, no one was thinking about crypto prices going insane like this. Okay. But it's also then not appropriate to claim that the debtor is acting in bad faith because it refused to address that situation that DCG didn't even address in its papers.

So when I come to the evidence of bad faith, they made a number of allegations, kind of inflammatory ones in their opening brief. We list it on page 22, talking about a clandestine process and the UCC seeking to enrich themselves, and the UCC trying to disenfranchise them, all loaded words, and they put in zero evidence of any of this. Mr. Verost was on the stand. Nothing about any of the negotiations. Nothing to substantiate anything like this.

So it seems to me that if there's any bad faith here, it's the bad faith of DCG putting forward an argument to inflame the Court and then refusing to put in any evidence to substantiate it. Zero.

So unless Your Honor has any further questions, I'll turn over the podium, and come back when we get to the ad hoc crypto group.

THE COURT: Thank you.

Alright. It's 11:20. Do people want five minutes? Take a break, and then we'll come back. Plan for 11:30.

Thank you.

(Recess)

THE COURT: So --

MR. ROSEN: Your Honor, I think we're waiting for a technological issue here.

THE COURT: All right.

MR. ROSEN: (indiscernible)

MALE: Now it says it's loading on my screen as well. Before it didn't say that. Before it said that it was uploaded and ready to go; now it says Loading.

MR. ROSEN: (indiscernible)

MALE: As well as I can.

MR. ROSEN: (indiscernible)

THE COURT: Let me ask what we're waiting for. Are we waiting for screensharing capability?

MR. ROSEN: Yes, sir.

THE COURT: I will say, you know, maybe we just -- if that's all we're waiting for, we can brave it and then when it comes back online we can -- yeah, and I think somebody provided me with a hard copy, so -- and these are helpful presentations, obviously, and people will share them and we'll take a look at them, but what people are doing is walking through them anyway, so -- so, I would say let's plow ahead if that doesn't do too much violence to your situation.

MR. ROSEN: We were going to use it, Your Honor, I know at some points in time. Just like Mr. Shore used some testimony, we had some testimony that we were going to put on the screen.

THE COURT: Yeah, well, again, I think you all gave me -- came by chambers this morning with a copy, so I have it, so just -- you might need to add a few extra words in there to make sure you can be understood to the folks who may not have it, but we'll get it -- we'll get it up as soon as possible.

MR. ROSEN: Okay. Thank you, Your Honor. For the record, Brian Rosen, Proskauer Rose, on behalf of the Ad Hoc Group. Your Honor, batting third is a blessing and a curse. A lot of things that were said by Ms. Vanlare and Mr. Shore are things that we were going to say, so we're going to shorten a little bit what we were otherwise going to provide and we'll just go on from there.

THE COURT: All right. Fair enough.

MR. ROSEN: Thank you, Your Honor.

THE COURT: And certainly if you want to take a break before you sit down to sort of canvass what you have to make sure in the interest of efficiency you haven't dropped anything, that's fine.

MR. ROSEN: I appreciate that, although we did have one really good graphic. I know that DCG's counsel

loved it this morning, but we'll see if we can get it up there on the screen.

THE COURT: We'll get it up there.

MR. ROSEN: Okay. Your Honor, as a court of equity, this court and the code on which it relies are focused on one goal, and that's to fairly distribute what value a debtor may have among its creditors and interest holders in accordance with the priority scheme of the code, and that is exactly what the Ad Hoc Group has strived for the past seventeen months and what we believe the plan currently provides. Throughout this confirmation hearing as well as the Court's consideration of the proposed compromise and settlement with the New York Attorney General, one word has been repeatedly said and it cuts to the heart of all that matters or that should matter, and that is the word "restitution". And as you have heard -- oh, there we go. Voila.

THE COURT: Ask and you shall receive.

MR. ROSEN: Thank you, Your Honor. Page Three --

THE COURT: Oh, don't thank me. I was not at all responsible for its demise or its return from the dead.

MR. ROSEN: I thought you waved some hands or burned some incense and you got it done for us, so thank you. So, as you've heard, Your Honor, the plan was -- has been heavily negotiated by the debtors, the Ad Hoc Group,

the UCC and other parties in interest over a very prolonged period, all focused on one goal, and that was to return to creditors as much of the assets that they lent as possible. And despite all the complexities of the cryptocurrency industry and the days of testimony and argument, we believe this case is not that complicated. Creditors have waited almost a year and a half for this moment and this court has the power to return to them their assets that have been withheld not only during this case but also for the two months prior to the commencement. Given that this is a cryptocurrency case, we thought it might be helpful to build the blockchain, so to speak, of each of the parties' arguments to show how everything fits together, and as you'll see, DCG has a few broken links in its blockchain.

As the bankruptcy court -- excuse me, as the code encourages, the debtors and the creditors worked hard to negotiate a plan that accomplishes three basic items. First, it returns to the creditors as much of their fiat or cryptocurrency as they are owed. Second, it preserves valuable claims and causes of action against DCG and other third parties for their asserted fraudulent and other illegal actions, to try and return the creditors the rest of what they are owed, and third, it places creditors in control of that litigation and of distributing the debtors' complicated asset mix fairly among its creditors in

accordance with the distribution principles.

The plan is a remarkable achievement earned through difficult negotiations between the debtors and their creditors, but those efforts were well worth it, as over 99 percent in the claim amount of those voting voted to support the plan. DCG stands alone in both its opposition to both the plan, and as you heard several weeks ago, the New York Attorney General's settlement. Having defrauded creditors and caused the debtors' bankruptcy, DCG believes creditors should be satisfied to share their loaned assets, assets which are rightfully creditors, with DCG because those assets have since appreciated in value. As we have seen, Your Honor, DCG's arguments failed.

We heard a lot of testimony several weeks ago, but the single most important part -- point of dispute does not actually require any testimony or factual analysis. It's purely a legal question. Specifically, does the bankruptcy code's priority scheme provide for unsecured creditors to receive the full contractual amount they are owed before equity can recover, or only a subset thereof? And as our brief, as well as those of the debtors and the UCC make clear, creditors' contracts must be respected before equity can recover; otherwise, equity would receive an unjustifiable windfall, and that is the first link in our argument's logical blockchain.

Creditors are entitled to the benefit of their bargain, return of the digital assets in US dollars in kind before there can be any recovery to equity. Just because the value -- just because the value today of the creditors' loaned assets may have appreciated during the case, a creditor owed one Bitcoin is still owed one Bitcoin today, not half or based upon the appreciation since our prior hearing, one third. Just like a hypothetical creditor entitled to one Honus Wagner card would still be entitled to a full card, not one ripped in half or as DCG would otherwise provide.

DCG argues that the debtors' estates are solvent and must return billions of dollars in value to equity, despite neither one, contesting the subordinated government claims asserted in the amount of $15 billion -- and that's if you deduct two of the three duplication New Jersey claims, as was established during the hearing -- nor two, contesting the evidence showing that creditors will at most only be receiving approximately 77 percent of their in kind cryptocurrency claims. Here, Your Honor, we focus on the Sciametta declaration, as well as the Aronzon testimony. Indeed, making statements about excess value, DCG's financial advisor acknowledged that he never, never even considered such claims when developing his declaration, and that is in his declaration at Note -- I believe Docket No.

1139, Note 3. While we've gone into significant detail and argument regarding how DCG is mistaken that the estates are insolvent, I will save the Court's time and I won't repeat our unrebutted arguments regarding how an estate's assets and liabilities are calculated, because the analysis is irrelevant. Even if the estates were solvent, the plan would be confirmable and DCG's argument would remain without merit.

It is a fundamental principle, Your Honor, of the bankruptcy code that equity holders cannot receive any recovery until creditors have been paid in full, and here it is uncontroverted that creditors will not be repaid in full the assets which they lent the debtors. Courts have made clear that in a solvent debtor case, creditors are entitled to receive the full bargain for contractual rights, including amounts above the petition date value of their claim. I think Mr. Shore focused on a Second Circuit -- a Seventh Circuit argument. We focused on one in the Sixth, Your Honor, and there in the Dow Corning case, in a solvent debtor case, the fair and equitable requirement for confirmation of a plan and the absolute priority rule require that absent compelling equitable consideration, a plan must pay creditors in full in accordance with all of their pre-petition contractual rights.

This means full repayment -- full payment of each

claim, including amounts above the petition date value of the claim, such as post-petition interest at the contractual rate, attorneys' fees and other contractual damages. Courts have held that where a debtor is solvent, creditors are entitled to receive what their contracts provide. Here, that means honoring the debtors' obligations to return crypto creditors assets in kind. Holding otherwise, Your Honor, would create a windfall to equity at the creditors' expense. Creditors are not receiving outside recoveries as DCG argues, but rather are suffering a shortfall of almost $1.5 billion in value, using crypto prices as of last week. Creditors are entitled to and should be able to recover their bargained-for rights before any value can be paid to equity.

Further, courts decline to modify negotiated contractual rights, particularly in solvent debtor cases, and there, Your Honor, we cite out of the Southern District of New York General Growth Properties, or otherwise known as GGP, 2011 Westlaw 2974305, July 20, 2011, and also another Southern District case, In Re Sultan Realty, LLC, 2012 Westlaw 6681845, December 21st, 2012. Creditors' contractual rights are clear. The master borrowing agreements provide that the debtors must return digital assets and/or US dollars to their lenders. The MBAs do not permit the payment of US dollar value of digital assets.

They must be returned in kind. If the Court finds that the debtors are solvent, which we submit they are not, creditors' undisputed contractual rights should not be overridden to provide a windfall to DCG. Creditors must receive the digital assets they are entitled to before there can be any recovery to DCG.

One thing that has been made clear, Your Honor, throughout this confirmation hearing is that not all creditors see eye to eye on every issue in the case. We've heard about the February term sheet. We heard how when the UCC came in, they had a perspective. We heard about the agreement in principle. You heard how the Ad Hoc Group disputed what that was all about, and the ability to move forward with that. We've heard about the difference of opinion between the dollar creditors and the crypto creditors. Chief among these, Your Honor, is that very issue: how to fairly distribute on an in-kind basis among those various creditor constituencies. And after months of negotiating this issue, what could have been heavily litigated and which continues in part to be litigated by a small subset of crypto creditors -- I think approximately seven people as of today -- was settled by the debtors and their two critical creditor groups.

The Ad Hoc Group, representing a majority share of every voting class in the UCC with a statutory obligation to

represent the interests of all creditors -- and this is the second link in our logical blockchain. As the testimony has made clear, the settlement is in the best interests of the debtors and their estates and should be approved. As Mr. Aronzon testified, the distribution principles resolved disputes "between and among the creditors, as well as those with the debtors over various legal issues that could have been brought forward and litigated about ownership of assets, security interests, constructive trusts or a number of things." This is the February 26th transcript, Your Honor, at 212, Lines 9 through 24.

The settlement embodied by the distribution principles satisfy all of the Iridium factors to be considered by this court, as demonstrated in the evidence introduced at the trial and presented to the Court: success of the litigation among the debtors and various creditor constituencies with respect to a multitude of potentially litigable issues, including valuation requirements under the code, including as a result of Section 562 of the code, whether certain assets were subject to constructive trusts or security interests, and more. All of these issues are complex and novel and would have been extremely costly to litigate to an uncertain outcome, and this was in the Aronzon declaration, Paragraphs 59 and 60.

The distribution principles received the approval

of almost every voting -- of almost all voting creditors in this case, and has received the affirmative vote of the overwhelming majority of every voting class. Again, the Aronzon declaration, Paragraphs 62 to 63. The distribution principles were negotiated at arms' length by highly qualified counsel representing the major creditor constituencies in this case and representing creditors of every class. Again, Aronzon declaration, Paragraph 61. And ultimately, the principles benefit all creditors by resolving the disputed issues and are supported by the debtors' reasonable business judgment -- Aronzon declaration, Paragraphs 64 through 65.

THE COURT: So, let me jump in here to ask two related questions. One is, I get the sense that what DCG's argument is from prior statements is that the negotiation, the give and take, took place among the creditors, but not necessarily among the creditors of the estate. Right? There's this notion of sort of the estate rolling over and saying, "Well, have whatever you want," and that DCG -- and I think it animates their earlier arguments on the AG settlement as well as this, saying, you know, the fights are among the creditors but not necessarily the debtors' driving a hard bargain. And I guess the related question is, are you aware of any arguments that have been made saying that what's provided for in this plan isn't essentially a formula

for saying "Here's what you get back for your restitution."?

MR. ROSEN: First, let me go back to the process itself, and I know others have already said it, but it couldn't be farther from the truth that DCG was not involved in the conversation, the mediation process that went on, but even before that, Your Honor. From November to January to February to that initial term sheet, we were actively engaged with DCG throughout the entire time. We had many, many meetings with DCG in an effort to try and negotiate the terms of a settlement or a compromising settlement with DCG with respect to the claims and causes of action that might exist, all to bring value back to the estate. I think as Mr. Shore correctly stated, all of those negotiations, there was never a discussion as to what the distribution of the assets would be among the debtors and the creditors themselves. It was, "What would DCG give back to the estate?" and not that other component.

So, I really -- I'm not offended by it, but I understand their argument. There was no rolling over by the debtors in this particular case. It was, "This is what people believe they're entitled to from a contractual standpoint," and I believe the word was used a moment ago from a "moral" standpoint. People would entitled to recover what they gave in kind, and they should not be prejudiced by the fact that the value continued to increase over time.

THE COURT: All right. So, from your point of view, this is a formulation memorializing what everybody's going to get among creditors.

MR. ROSEN: The debtors did -- the debtors did what debtors are supposed to do, what creditors' committees are supposed to do and major constituents are supposed to do. They're supposed to find out what would be an appropriate distribution of assets pursuant to a Chapter 11 plan, negotiate it out, see if it takes, and the vote obviously showed that people were willing to give and take on all aspects, the dollars versus the crypto.

THE COURT: But I'm assuming, then, if you think about it from the point of view -- your point of view of what's contractually owed, if there's a different settlement with different terms, it just changes how the pie is split up. It doesn't change the fact that there's a 77 percent recovery. Maybe it's an 82 percent recovery; maybe it's a 745 percent recovery. I -- I guess I'm just trying to awkwardly get the notion from your point of view. It doesn't really affect DCG's recovery as an equity holder in any event.

MR. ROSEN: It doesn't, Your Honor. It still leaves that giant hole that I referred to of the $1.5 billion.

THE COURT: All right.

MR. ROSEN: The third link, Your Honor, in our logical blockchain is compliance with the bankruptcy code. The settlement embodied by the distribution principles complies with the provisions of the code, including Section 502(B). Section 502(B) provides that upon an objection to a claim, which DCG attempted to interpose on the eve of confirmation, the bankruptcy court shall "determine the amount of such claim as of the petition date," and "shall allow such amount". There is no limiting language providing for the disallowance of claim amounts above that, except in the enumerated subsections.

But the appreciation of cryptocurrency assets owed to the creditors does not meet any of the enumerated subsections to which Section 502 provides a cap, such as 502(B)(6), which limits landlords' claims pursuant to a formula. Section 502(B) does not establish a cap on creditors' recovery. It sets forth evaluation methodology to provide creditors their pro rata share of the debtors' assets. That is precisely what the distribution principles here provide. Creditors receive their pro rata share of recoveries based on the petition date value of their claims. That does not mean they stop being entitled to the return of their loan assets.

The first broken link in DCG's argument is simple, Your Honor, and I know that people have already said it

already, but I'll do it again. DCG does not have standing to assert their objections to the distribution principles. DCG must have an actual financial stake in the outcome of this case. One of the primary facts that became clear over these past few weeks is that DCG does not. DCG spent a lot of time pointing to the duplicative proofs of claim filed by New Jersey's Bureau of Securities, but fails to discuss the remaining subordinated government claims filed in excess of $15 billion. This includes claims by state and federal securities agencies as well as state law enforcement agencies such as the New York Attorney General, which filed claims on account of its complaint against the debtors and DCG for the fraud perpetrated upon creditors and seeking restitution, disgorgement, and other penalties. As made evident during --

THE COURT: Can you -- can I ask you -- I don't think there's been a lot of talk about this, but now is as good a time as any. Certainly there are cases -- other cases where the government gets involved. I guess they're often criminal cases where there's various sort of complementary ways of approaching victim restitution, right, whether you're talking about Madoff, whether you're talking about Dreier, and complementary ways those processes sort of complement what's going on in the bankruptcy, even if they don't start out that way. Can you talk about that just to

put this in context and how these may be similar or how they may be different?

MR. ROSEN: I often go back to a case that I did, Your Honor, which was Enron, and I had a lot of claims that were made against the debtor there, and in that case we did virtually the exact same thing as we've done here. We agreed to a subordinated claim by the governmental agencies back and to the extent that there was a shortfall, and there was ultimately a distribution to the subordinated level of governmental claims there would be the restitution back. So, I see this as something very similar and I applaud the debtors for going back to that sort of construct and getting the recovery back for creditors, so I don't think this is an abnormal situation.

THE COURT: Thank you.

MR. ROSEN: Thank you. As I said, Your Honor, the first broken link in their argument was simple. It was a question of standing, and as made evident during the evidentiary portion of the hearing, the only analysis that DCG's witnesses offered is a simple math exercise that none of the parties dispute, but as noted before, ignores the class of subordinated government claims. But for DCG to even have a remote possibility of any recovery in these cases, it cannot simply handwave away over $15 billion in claims senior to a recovery for equity. Mr. Verost's

testimony makes clear that DCG's entire analysis pretends that these claims don't exist. Meanwhile, DCG does nothing to contest the merits of these claims, and its witness's analysis shows that even if the Court credits all of DCG's arguments, there would be approximately $2.5 billion in value exceeding the petition date value of general unsecured creditors' claims, far below the more than 15 billion of nongovernmental -- excuse me, nonduplicative asserted governmental penalty claims.

The second broken link in DCG's argument, Your Honor, is that it does not contest any of the supporting parties' arguments. DCG does not argue that creditors are receiving more in cryptocurrency coins than the amount that they lend. Instead, DCG simply claims that DCG should be entitled to it. For reasons which we've already gone through today and in the opening arguments, that argument is incorrect. Perhaps as a throwaway, Your Honor, because it was relegated to I think the next-to-last page in its objection and one paragraph, and also to the US Trustee's argument about the Ad Hoc Group's fees and expenses, we believe that the plan --

THE COURT: Before you jump in there, let me ask -- I have a general sense that there's been marked progress on the substantial -- well, on the US Trustee's Office views about its objections, and I know there are four points

reserved. I don't quite have the contours of what's still in play. I don't want to jump -- jump ahead, but I want to make sure I understand your comments about the fees and expenses in the context of what's still in play and what's not. That would be helpful.

MR. ROSEN: Sure, and -- but first, Your Honor, I want to point out that we believe that we don't even need to get the substantial contribution, and I know that the Dollar Group is going to get to the same point. We believe, Your Honor, that we are entitled to those payments pursuant to Section 363 of the bankruptcy code. The fact that these are all included in the plan support agreement and in the plan itself, the fact that the creditors -- the Ad Hoc Group, which signed on to the plan support agreement, which voted to support the plan, Your Honor.

That was consideration being given as part of the execution of the plan support agreement, and we believe that upon the Court's entry of the order confirming the plan that nothing more needs to be done with respect to Section 363 of the bankruptcy code. This is something that is not novel. It is certainly done in virtually -- I don't want to say "every" but many plan support agreements or restructuring support agreements, and I believe Mr. Aronzon even testified to that aspect of it. And as far as the narrowing of issues with respect to the US Trustee's side, Your Honor, we've

tried to answer as many questions as possible to the United States Trustee that they've raised about substantial contribution and whether or not there's other fees and expenses included in our numbers, which they are not, Your Honor, as we've told the United States Trustee.

So, if I move on from the 363 side, Your Honor, to the substantial contribution, we believe that we certainly have satisfied the substantial contribution aspect, if in fact we go to that point, and a lot of that was with respect to the questions that I ran through with Mr. Aronzon during his testimony. Your Honor, if you look on the screen there, on your screen, you can see Page -- I think it's 25, 28. Greg?

MR. STEINMAN: Twenty-six.

MR. ROSEN: Twenty-six. I was not even close. The Ad Hoc Group was formed, Your Honor, November '22 and we've been involved in this situation since that time and of course our membership has grown significantly. It started with, I believe, only six members, Your Honor, and currently it's over 85 with claims in excess -- currently, $2.5 billion worth of claims, but the plan support agreement was supported by 62 of our members, representing over 2.1 billion in petition date values, Your Honor. The Ad Hoc Group has done a lot during this case. It's sometimes been very positive through the development of the plan and the

distribution principles, and most notably, several weeks ago in the development and negotiation of the Gemini settlement. Sometimes we've countered the things that were being done by the UCC and the debtors, but it was to state the position that was espoused by $2.5 billion worth of claims, which is over two-thirds of the amount of claims in this estate, I believe, Your Honor.

And we believe that, as was reflected by Mr. Aronzon's testimony -- Jordan, could you flip it -- you can see that we asked -- well, you can see that we asked Mr. Aronzon several questions. The one here that's on the screen: "I think you just mentioned previously that you've been involved, and I think you even said one thousand hours or something, about calls with the Ad Hoc Group." Answer: "It feels like that." I don't know if that was a slam or not, but "It feels like that."

MR. ARONZON: It wasn't.

MR. ROSEN: "It's a little -- I was being a little facetious, but it certainly feels like that. It kind of feels like daily conversations about the Ad Hoc Group." That was one testimony. And then, as a result -- Mr. Aronzon, questioned again, was: "As a result of its nonsupport of the agreement in principle, was the Ad Hoc Group then the catalyst in connection with moving forward on the no-deal plan?" Answer: "It was." "And is that the

plan that is currently before the Court for confirmation?" Answer: "It's some version of it, yes." Question: "And do you know what the Ad Hoc Group's role was in connection with the formulation of the distribution principles?" Answer: "I would say instrumental, and by the way, I would say the same thing of the creditors committee, too."

And one more. "Since before the filing of the petition, we've been dealing..." -- this is Mr. Aronzon stating, "We've been dealing with various groups of creditors, and the Ad Hoc Group is one of those groups. As I understand it, it is a group that is both dollar-denominated fiat claimants and digital asset crypto claimants, I think of all varieties, as a matter of fact, and as such and given the size of the group in terms of claims, we spent quite a bit of time, frankly, negotiating with that group alongside other groups to try and put an agreement together to settle the various disputes that you've been hearing about for the past few days and would have been the subject of, you know, months and months, a year and a half, almost, of work to try and get some agreement on how to divide up the assets or reorganize Genesis."

There's one more. This was just Mr. Frelinghuysen saying what the Ad Hoc Group had done. Your Honor, we believe that while there is no need to address the

substantial contribution aspect, and we appreciate what the Court said about the need or lack of need to file a motion, we believe that we've satisfied the Section 363 component or could and we certainly believe that we've satisfied the substantial contribution aspect of it. So, Your Honor, unless the Court has any additional questions for me, that will be my presentation.

THE COURT: All right. Thank you very much. I don't have any further questions at this time.

MR. ROSEN: Thank you, sir.

THE COURT: So, let me just get a sense of how many other people are going to be heard on this side of the equation before we hear from DCG. I see the New York AG and the Dollar Group, so we've got about four or five. All right. We'll see where we are at the end of that in terms of time. Please.

MR. DRAGHI: Good afternoon, Judge. Tom Draghi from Westerman Ball, counsel to the New York Attorney General's Office. I feel like I should have a handout or a PowerPoint, but I don't, so -- for the record, Your Honor, the New York Attorney General's Office supports confirmation of the debtors' plan. Under the plan, the debtors are seeking to make distributions to holders of allowed unsecured claims based on their contractual entitlements with the debtors. This distribution scheme is consistent

with the settlement that was negotiated and agreed to by the debtors and the NYAG under which the NYAG will have an allowed unsecured claim in each of the debtors' unsecured classes under the plan based on restitution for losses incurred by the victims that were identified in the amended complaint filed in the state court action. Here, Your Honor, those victims are the unsecured creditors in these cases.

So, I think, Your Honor, one key point for the New York Attorney General's Office is how fair and equitable the proposed plan is, and more to the point, how it's in the best interests of creditors. I'd like to turn to one question that you asked Debtors' counsel, and that was -- you know, you wanted to understand what would happen in the event of the plan not being confirmed and this settlement being approved, and you -- more particularly, you wanted to understand what the economics might be. And to that, Your Honor, I think unequivocally the economics would be worse for the debtors' creditors if the plan were not confirmed and the settlement agreement were approved. I echo Ms. Vanlare's comments that the settlement agreement is a standalone document and should be approved regardless, but you've got to look at the costs of administering this estate that are continuing and will continue if this -- if the professions have to go back to, you know, the drawing board

and start negotiations.

The debtors, the creditors' committee, the Ad Hoc Committee, the Dollar Group have done a yeoman's job, they really have, Judge, getting us to this point, but it took a lot. It took -- you know, you heard Ms. Vanlare saying -- you heard, you know, counsel for the committee say how much time was spent in getting the negotiations and, you know, dealing with mediations and different iterations of proposed plans and things of that nature, and it took months and months and months. Nut every month that passes, Your Honor, is going to be millions and millions of dollars that will be unavailable for unsecured creditors if it turns out that the parties have to go forward with another type of plan and go back to the negotiating drawing board.

And then, the other key thing, Your Honor, that you can't lose sight of is the risk associated with cryptocurrency dropping in value. DCG is asking the Court to have that risk be shifted to the creditor body because if this plan doesn’t get confirmed and it takes two, three, four more months for those negotiations for continue for them to try to come up with another iteration of the plan that would be acceptable to the creditors, and again, I reiterate the creditors have all voted in favor of this current plan. But not only will it be tens of millions of dollars in legal fees, but there's a risk that

cryptocurrency could drop in value. That, Your Honor, when you combine those two attributes, begs for this court to approve and confirm the plan, because it's not only fair and equitable, but certainly the best interests of creditors, and that, Your Honor, is why the US -- I'm sorry, the New York Attorney General's Office supports confirmation. Thank you.

THE COURT: Thank you.

MR. LIEBERMAN: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. LIEBERMAN: No longer good morning. Seth Lieberman of Pryor Cashman on behalf of the Ad Hoc Group of Dollar Lenders. As I mentioned, I'm here today with my colleague, Daniel Brenner. I think it's a nice segue from the New York Attorney General, who said that our group was doing a yeoman's job in this case, to now take the podium, Your Honor, and as Your Honor may recall, I was last before you in late February for the purpose of delivering my opening statements for the confirmation trial. At that time, I advised the Court not only about our client and the work that we'd been doing in this case, but as well as the background behind its formation, what really amounts to be the tortured history among the multi month-long negotiations among the different case constituents, my client, Mr. Rosen's client, the UCC, the debtors, regarding the terms of

the PSA, the underlying distribution principles, and ultimately, the plan that's before Your Honor and we were unequivocal in stating our support of confirmation of this plan.

That support was evidenced, Your Honor, just to remind the Court, in our statement in support of confirmation, which can be found at Docket No. 1323. We were present, as well as many in this courtroom, for several days in late February. We heard the testimony of the many witnesses, such as Mr. Aronzon, Sciametta, Geer, among others, in support of confirmation. We bore witness to cross-examination of those very same witnesses from the few parties that at this point oppose confirmation, and after listening to and digesting that testimony and for the reasons that were originally set forth in our statement, the Dollar Lender Group continues to support confirmation of this plan.

And to be clear, Your Honor, the Dollar Lender Group respectfully requests that this plan should be confirmed now. As was mentioned by one of my colleagues that just took the podium, time is not on our side, not the debtors, not the plan supporters, I'd even say not even the plan objectors, and I think Your Honor recognized this in colloquy during the opening statements with one of the plan objectors where Your Honor said on February 26th -- and I'll

quote the record: "I understand one of the significant concerns of cryptocurrency of all the customers was to get paid promptly, and with the rising value of cryptocurrency, now is a pretty good time to do that, and that delay risks that set of circumstances."

Make no mistake about it, Your Honor, time is our enemy, and given the Court's implicit recognition -- again, Your Honor, that was on February 26th at Page 134, Lines 14 through 18. Given Your Honor's recognition at that point, the Dollar Lender Group respectfully requests that this plan is confirmed now so that it can be consummated and parties in interest, as Ms. Vanlare said, can receive the US dollar and crypto assets that they're entitled for.

Your Honor, if the Court would indulge me, I'd like to take a minute -- I've put a lot of red X's in my prepared remarks because most of the other plan supporters have already gotten there, but I'd like to perhaps approach the fee and expense issue a little different than Mr. Rosen did. I'd like to spend the balance of my remarks dealing with that issue. It obviously forms the basis of the United States Trustee's plan objection; I know that we're going to deal with that later, but rather than coming up twice, I know that DCG mentioned it in their papers as well, so I thought I would just hit it right now and hopefully we can handle this issue now.

According to these objections, these objectors posit that Section 503(B) is the exclusive means by which this court can award fees and expenses to non-estate professionals. For its part, as I mentioned, DCG appears to join in this objection, although their 40-page objection dedicates a single paragraph -- it's Paragraph 93 -- to this issue, wherein it indicates that reimbursement of these fees and expenses is impermissible because the plan is supposedly proposed in bad faith, as we've heard, and that those fees and expenses should require separate court approval. I think the other parties have already handled the bad faith issue; I'm not going to restate those arguments. And I think, Your Honor, we appreciate the fact that we don't need to necessarily come back here for separate court approval.

But suffice to say, Your Honor, these plan objectors are mistaken as to the facts and the law, and I want to set the record straight on these issues. The gating issue by these plan objectors, again, is that 503 is the only way that Your Honor can grant --

THE COURT: Well, let me just help you out. I'm aware of what the case law is on this.

MR. LIEBERMAN: Great.

THE COURT: I know that there's lots of decisions about the issue. I know in our district some of them predate Judge Sullivan's decision in the Lehman case.

MR. LIEBERMAN: Yep.

THE COURT: And so, I'm aware of what authorities are out there and whenever you get a District Court decision like that, it's not binding per se. It's worthy for purposes of its power and persuasion. That's because different District judges will rule different ways on different issues. At the same time, one would be remiss to not note that Judge Sullivan now sits in the Second Circuit. So, it certainly is authority that is here in this District, and again, but I'm aware of the other authority that's out there.

MR. LIEBERMAN: I appreciate that, Your Honor. Let me make a few remarks regarding that. First, we extensively, I think, detailed this issue in our papers -- again, that's at Docket No. 1323. I don't want to recite them. I want to talk about, maybe, the post-Lehman cases, because again --

THE COURT: All right.

MR. LIEBERMAN: In the face of that decision, what's happened in this circuit since that decision? And again, Your Honor, what we're really looking for here are arguments outside of 503. Mr. Rosen mentioned 363. I think it's 363(B). Some parties, some courts have cited 1123(B)(3), 1123(B)(6), 1129(A)(4), Bankruptcy Rule 9019. Any one of those, we respectfully submit, allow this court

to make a finding of reimbursement under the plan. But let's talk about those post-Lehman decisions, Judge, because I think it's extremely important. We have in this Circuit -- and I'm not going to limit the discussion to that -- we have the Purdue decision. That's cited in our papers. We have the Stearns decision. I think the Stearns decision, Your Honor, is especially interesting. Judge Chapman at the time -- again, that's a 2019 decision. Judge Chapman at the time cites -- and I'm going to cite her on the Stearns decision. She says: "Where consideration is paid pursuant to a settlement, the Court need not review such payment under Section 503(B) of the bankruptcy code." That's 607 BR 781-793.

We cite other decisions, Your Honor. I was before Your Honor in AMR, way back when. Obviously, that's -- I don't need to talk about that. I don't need to talk about Judge Gerber and Adelphia. I will say, however, that the Adelphia decision was cited positively in the Delaware cases that we cite in our very paper. So, that's the Mallinckrodt decision. That's the extraction decision where we annexed the trial transcript, and I take great pride in that, Your Honor, because I argued that against the United States Trustee before Judge Sontchi. Again, this is all post-Lehman.

So, not only have we argued in our papers and I

think the other parties have argued in their papers by Lehman is just frankly inapplicable here, Your Honor. The facts in Lehman are just not the facts here. Neither my client nor Mr. Rosen's client are members of creditors' committees trying to get paid in that capacity. But putting that aside, I think that the post-Lehman decisions have done a remarkable, and dare I say consistent, job indicating why facts and circumstances such as these allow this court the ability under the myriad of code sections as well as the bankruptcy rule to allow Your Honor to make the decision that Your Honor needs to make in order to enforce the plan provisions as provided.

Your Honor, if the Court would indulge me, we believe that that's the authority here, but what does the plan provide and what's the evidence provide, because obviously that's important. The plan speaks for itself. Obviously, Article 8 of the plan, which Your Honor has before you -- I think the latest iteration of the plan is at Docket No. 1392 -- talks about the settlement release injunction and related provisions. This is just a sample, Your Honor, of what the plan provides on this issue. But that article talks about distributions, releases, consideration pursuant to 363, 1123, 9019, the very same code sections and rules that I made reference to. Now, as the plan objectors may indicate that it's nice that you

might have the law on your side, it's nice that the plan may provide what the plan provides, but what's the evidence show? And we all were here to see the evidence that was before Your Honor, and I want to be clear, Your Honor; we're not just talking about the live evidence. We're talking about the declarations. The declarations are as important and evidentiary as anything else in this case.

I'm not going to read through what so many others already, and we'll probably revisit these between now and the end of the day, about the work that was done by my group and the other groups. That's -- again, I'm just going to draw the Court's attention to Mr. Aronzon's own words in his declaration, which again is at Docket No. 1330, Exhibit D. I draw the Court's attention to 59 through 64 -- Paragraphs 59 through 64 of his declaration. Specifically, Your Honor, Paragraphs 60 through 62 really talk about the back and forth, the heavy lift by these groups in order to get this deal done. Mr. Geer's testimony, similarly -- his declaration is at 1355 -- Paragraphs 27 through 37 of that declaration also speak to the hard-fought nature of the same and the Dollar Group's role in those negotiations.

Finally, Your Honor, I'd be remiss -- finally on this point. I have one more after. On this point, Judge, I'd be remiss if I didn't point out what I think may be the most compelling piece of evidence that we have in this case,

and that's at Paragraph 107 of Mr. Aronzon's declaration. I could read it, but I know that everyone will want to get to lunch at some point. But Paragraph 107 of the Aronzon declaration lays out in great detail the debtors' judgement with respect to the payment of these different Ad Hoc Group and Dollar Group restructuring fees and expenses, how in his estimation, but for our involvement and but for this negotiated deal point being settled, that there never would have been a deal in this case, that deal which eventually culminated into the PSA, the underlying distribution principles, and now here we are with the plan.

Mr. Aronzon also testifies, and this will be relevant in a moment, that in his estimation that these parties made a substantial contribution in connection with our very significant role in the case, and that as a result of that, as long -- as well as the debtor exercising their business judgement, that these fees and expenses should be paid. Your Honor, there are two significant takeaways from those declarations, the Geer and the Aronzon declarations. First, they unequivocally lay out an evidentiary standard for reimbursement of non-estate professional fees and expenses under the plan pursuant to 363(B), the 1123(B)(3) and (B)(6), 1129(A)(4) and Rule 9019. And second, perhaps most significantly, the testimony is unrefuted. Not only did no one cross them on these very issues, but in fact, no

one brought in a witness to the contrary. Given that, Your Honor, we would submit that this court has the ability to and should make a finding with respect to these other non-503(B) sections, to allow for the payment and reimbursement of these fees and expenses under the plan.

A final, and I hope quick, note on 503(B), Your Honor, getting back to Mr. Rosen's point, if the Court does feel compelled -- and we don't believe the Court needs to in any way, shape, or form, but if the Court feels compelled to make an alternative finding under Section 503(B), that again, Your Honor, has more than an ample evidentiary record pursuant to the Geer declaration, the Aronzon declarations, specifically Paragraph 107 of that declaration, to make such a finding. It provides uncontroverted evidentiary foundation, and to the extent that Your Honor chooses to make that 503(B) finding, the Court has plenty of evidence to do so.

In sum, Your Honor, for the reasons set forth in our statement at Docket No. 1323, as well as the reasons laid out on the record today, the Dollar Ad Hoc Group respectfully requests that the Court enter an order confirming this plan. Thank you, Judge.

THE COURT: Thank you. All right. Who's next?

MR. SMITH: Good morning, Your Honor. Dustin Smith for Hughes Hubbard Reed, appearing on behalf of the

Gemini Trust Company as agent for the Earn Users. I recognize that the Court has already heard substantial arguments related to the affirmability of the plan, and I'll avoid prolonging our time here by repeating those. I will simply say that we agree with points that have been made by the debtors, the UCC, and the Ad Hoc Group in support of the plan. We believe the plan as drafted is confirmable and we further believe that the plan represents the best and probably only realistic path forward for the creditors of Genesis writ large to get in-kind recoveries on the most expeditious basis possible.

Earlier in the confirmation process, we submitted a reservation of rights identifying specific issues that we had with the plan. We'd like to acknowledge the work of the debtors and their counsel to address these issues and resolve them as we went forward. As a result, in January, Gemini recommended to its users that they vote in favor of the plan, which they overwhelmingly did. As such, Gemini has satisfied the requirements of the Gemini acceptance event, which I believe Mr. O'Neal recognized at the hearing in February, and that acceptance event is continuing today. As Mr. O'Neal referenced at the beginning of the hearing, we have reached both the settlement in principle but now a settlement embodied, which we'll be filing shortly. We look forward to being back here in front of the Court in April to

voice our support for that motion as well.

That being said, one lesson I did learn from my short and inglorious career as a Boy Scout is that you should always be prepared, so while the settlement will resolve the various issues between Gemini and the debtors, including providing for full, coin-for-coin recovery on an expedited basis, that does not affect our current support for the confirmation of plan, which we continue to urge here today.

Lastly, as a bit of housekeeping, I know that the debtors requested to address certain issues raised by SOF, that we place some statements on the record, which I'm happy to do here. And to that end, we -- Gemini can confirm that Gemini in its proprietary capacity has no beneficial interest in the Gemini reserve points as defined in the plan, the Gemini Earn operation assets as defined in the plan, and the GBTC shares, although we note that if the settlement agreement is approved, those will be part of the recoveries that will go out to Gemini lenders.

Similarly, we will also confirm that Gemini in its role as the Gemini distribution agent will not be deducting any fees or costs from the distributions that Genesis will make to the Gemini lenders, and additionally, we will not be holding back or otherwise establishing reserve from those funds that will be distributed to those (indiscernible) from

the debtors for the benefit of Gemini lenders. Once again, I note that if the settlement agreement is noted, those distributions will be made pursuant to the settlement agreement.

Unless Your Honor has any other questions, I will cede the podium to --

THE COURT: All right, I do not. Thank you very much.

MR. SMITH: Thank you very much.

MR. MEDINA: Good afternoon, Your Honor. Eric Medina and Medina Law Firm. I'm here today on behalf of BAO. Your Honor, I rose this afternoon just to make some very quick comments. BAO, as Your Honor knows, is an Earn victim, one of over 200,000 people that were victims to a scheme that they got no information about and that ultimately led to a very expensive, very long, drawn-out bankruptcy case, so long that it's been one and a half years. The Gemini Earn program started in February 2021, so this case has been pending for about two-thirds of the time that the program has actually existed. We became involved in this case in December of 2023. I remember my first hearing here. It was watching Your Honor point the different constituent groups out to different rooms to see if they could try and settle the case. They didn't.

As I stand here today, that's still the case.

There is no alternate plan. We are absent the confirmation of this plan, several months away from any kind of resolution that I believe one of the other counsel this morning said very correctly, that "We'll return the coins to the victims that have so sorely and longly waited for them." Your Honor, the basic principle that established this court is very much on the Court's website at the landing page and it says, "This court exists to provide relief to individuals under the bankruptcy code and persons under the bankruptcy laws. It's designed to protect the interests of creditors and to ensure efficient, fair administration of bankruptcy cases." This is a liquidating plan -- excuse me, is a liquidating plan in a voluntary case. It's time to finish this case and it's now time to conclude the matter.

I thank the debtors for including comments in the proposed confirmation order, which both protect the rights of BAO and other Gemini Earn victims, and we look forward to seeing the Gemini settlement. Thank you, Judge.

THE COURT: Thank you.

MS. MOSSE: Good afternoon, Your Honor. Julia Mosse from Katten Muchin Rosenman on behalf of Ted Gorisse. Your Honor, as I mentioned during the opening, Mr. Gorisse is a creditor. He is also a member of the official Committee of Unsecured Creditors and a member of the Ad Hoc Group of Genesis Lenders. Mr. Gorisse supports confirmation

of the plan in its entirety. Before I begin, on behalf of our client I'd like to take a moment to commend the hard work of everyone involved in these cases, including the debtors' counsel at Cleary, the UCC's counsel at White and Case, the Ad Hoc Group's counsel at Proskauer and the many other law firms, financial advisors, and professionals who've worked over the past almost year and a half to bring us to this point in these Chapter 11 cases.

Your Honor, throughout the confirmation hearing and this morning, we heard a lot about the extensive arms-length negotiations that culminated in the plan that's before the Court today. As I mentioned, our client supports the plan in its entirety. That includes all components of the plan, including the distribution principles, the New York Attorney General settlement, and the debtor releases. But as with my opening and as with our client's statement in support of confirmation, which was filed at Docket No. 1351, the focus of my statement today will be on the setoff principles, which are contained in Exhibit M to the plan supplement that was filed on January 9, 2024 at Docket No. 1144.

During my opening, I addressed two points, Your Honor. The first, why the setoff principles are fair, reasonable, logically consistent, and should be approved, and second, why DCG's objection to the setoff principles is

meritless, and I'd like to come back to those two points today, Your Honor, now that we have the benefit of the arguments and evidence educed during the confirmation hearing. So, first, the setoff principles should be approved as part of the plan. As the debtors stated in the plan supplement filed at Docket No. 1144, Page 2, the setoff principles are integral to and are considered part of the plan. And as Ms. Vanlare covered in her remarks this morning -- this is on Page 13 of her presentation -- the setoff principles are an exercise of the debtors' sound business judgment and discretion, and there has been no evidence presented that they were negotiated or proposed in bad faith or with an improper motive.

And that's exactly right, Your Honor. That's what the evidence educed during the confirmation hearing has shown, and in support of that statement, the debtors cite to Mr. Sciametta's declaration, Paragraph 13, where he talks about the setoff principles applying to the full universe of creditors with net claims against the debtors' estate. Mr. Sciametta also testified at the hearing that the setoff principles consistently apply petition date pricing to all digital assets loaned by a setoff claimant to Genesis, all digital assets borrowed by a setoff claimant from Genesis, and all digital assets pledged as collateral by a setoff claimant to Genesis. And as explained in our client's

statement, and that's at Docket No. 1351, paragraphs 32 to 35, the bankruptcy code does not dictate a specific valuation methodology to be applied here. Instead, courts have discretion to apply valuation methodology based on the specific facts and circumstances of the Chapter 11 case. And that discretion, Your Honor, is not disputed. Not even DCG disputes that that's the appropriate standard.

And here, for at least three reasons, the specific facts and circumstances of these Chapter 11 cases support the debtors' selection of the petition date as the proper valuation date for the setoff principles. First, using the petition date to value each of Genesis's obligations, the claimant obligations, and the collateral that Genesis is holding on behalf of the setoff claimants is logically consistent. You're using the same date across the board; there's no cherry-picking. Second, the consistent use of petition date pricing is also fair and equitable. By using the petition date pricing to value both the setoff claimants and the debtors' mutual obligations, the setoff principles distribute the substantial appreciation in the value of cryptocurrency since the petition date to both the setoff claimants on their alleged obligations to the debtors and to the debtors' bankruptcy estates on their alleged obligations to the setoff claimants.

And third, the debtors could have employed a

number of different valuation methodologies that would have allocated more of the appreciation in cryptocurrency to the setoff claimants, and you heard this, for example, from Mr. Sciametta, Your Honor, where he testified that if the debtors had used current prices instead of petition date prices to value the collateral pledged by the setoff claimants to Genesis, then the result would have been higher claims by the setoff claimants against the debtors' estates. But the setoff principles don't do that. Instead, they represent a compromise that strikes a fair balance between the setoff claimants and the debtors' estates.

To support approval of the setoff principles, Your Honor, you also have in evidence the declaration of Mr. Aronzon, which is filed at Docket No. 1330. Mr. Aronzon, who has over 40 years' experience as a lead restructuring advisor, has served as an independent director on numerous boards, testifies in his declaration that as a special committee member he received regular and frequent updates from the debtors' advisors, including Cleary and A&M, regarding many topics, including the plan and claims disputes. That's in Paragraphs 2 to 3 and 8 of Mr. Aronzon's declaration. He testifies that based on his experience and discussions with the debtors' advisors, Mr. Aronzon believed the plan maximizes the value of the debtors' estates and provides as meaningful a recovery and

maximum in-kind distributions to as many of the debtors' stakeholders as possible under the circumstances of these Chapter 11 cases. That's in Paragraph 9 of Mr. Aronzon's declaration.

In Paragraph 10, Mr. Aronzon goes on to state that the plan is the product of extensive good faith arms-length negotiations for more than a year among the debtors and key stakeholders, and implements various settlements on key issues among not only the debtors and the committee, but also the interests of various creditor groups. Also in Paragraph 10, Mr. Aronzon describes that the debtors, their advisors and the special committee have worked tirelessly in the Chapter 11 cases in an effort to maximize the value of the estates, and in Mr. Aronzon's opinion, the plan represents the best path available to expeditiously conclude these Chapter 11 cases and maximize creditor recovery.

And finally, in Paragraphs 103 through 105 of Mr. Aronzon's declaration, he explains why the plan has been proposed in good faith under Section 1129(A)(3) of the bankruptcy code. Mr. Aronzon states: "I believe the plan was proposed in good faith with the legitimate and honest purpose of maximizing value of the debtors' estates." That's Paragraph 103, and in Paragraph 104, he again describes the months of good faith, arms-length negotiations with a wide assortment of parties in interest that

ultimately led to the filing of the plan.

THE COURT: So, let me ask you from your understanding of the evidence what evidence is there, if any, on the other side of the equation in terms of the setoff principles.

MS. MOSSE: None.

THE COURT: All right.

MS. MOSSE: So, that's -- that's exactly what I was just going to say, and Mr. Aronzon's testimony, Mr. Sciametta's declaration, directly refutes DCG's baseless assertion in its confirmation objection and in its opening statements that the setoff principles were proposed in bad faith and in breach of the debtors' fiduciary duties. DCG had the opportunity and did cross-examine Mr. Aronzon extensively. They did not ask him a single question about the setoff principles, notwithstanding their accusation that they were proposed in bad faith. There is no evidence, Your Honor, in the record from which the Court could conclude that the debtors breached their fiduciary duties in connection with the setoff principles, and this goes to the second point that I addressed during the opening, Your Honor, which is that DCG's objection to the setoff principles is meritless.

And I will say, Your Honor, that to the extent that others parties, as you heard, have made standing

objections to DCG's objection, to the extent that DCG lacks standing to object to the plan, it would obviously equally lack standing to object to the setoff principles, which are an integral component of the plan. But DCG's position with respect to the setoff principles is that rather than consistently applying petition date pricing to both the debtors' and the setoff claimants' obligations, only the setoff claimants obligations to the debtors should be valued using current pricing, while the debtors' obligations to the setoff claimants should be valued using petition date pricing. Unsurprisingly, given DCG's overall efforts to siphon value away from innocent creditors and into its own pockets, DCG's valuation methodology is extremely unfavorable to the setoff claimants and beneficial only to DCG.

And we heard a lot about DCG's misconduct during the course of the hearing. I said this during my opening, Your Honor. Regardless of how DCG's misconduct is ultimately adjudicated, DCG should not be permitted to profit from these Chapter 11 cases to the detriment of innocent creditors. By selecting the current price as the date to value only the claimant obligations to the debtors, DCG would have the setoff claimants' payment obligations to the debtors increase substantially, given the substantial appreciation in the value of the digital assets since the

petition date. And similarly, by selecting the petition date as the date to value the setoff claimants' collateral held by Genesis and the setoff claimants' loans to Genesis, which are the debtors' obligations to the claimants, DCG would have the debtors' payment obligations to the setoff claimants be substantially lower than if current pricing were used.

DCG has no legal authority to support this unfair valuation approach. Instead, what it did during its opening, again, without any support educed during the course of the hearing, is that it attempts to impugn the integrity of the debtors and of the setoff claimants, including our clients, by arguing that the debtors simply acquiesced to creditors' demands and gave certain creditors a windfall when agreeing to the setoff principles. That is not true and there is no evidence to support that. Had the debtors simply acquiesced to creditor demands, the setoff claimants' claims could have been much higher. They are not, under the setoff principles.

And I'd like, with the Court's indulgence, to use a simple example and then I'll be done, to show the absurdity of DCG's position. So, if you assume that, Your Honor, before the petition date a setoff claimant loaned one Bitcoin to Genesis, borrowed one Bitcoin from Genesis, and pledged one Bitcoin to Genesis as collateral, so that

claimant would have a claim against Genesis for two Bitcoin and Genesis would have a claim against the claimant for one Bitcoin. If you use DCG's approach, the setoff claimant would receive approximately $21,000 in value, which was the petition date price of the one Bitcoin, on account of its loan to Genesis; would get approximately $21,000 in value on account of the one Bitcoin it pledged as collateral to Genesis, so the creditors' claim against Genesis would be approximately $42,000. At the same time, under DCG's approach, the setoff claimant would be required to pay Genesis over $68,000 in value, which is the current price of one Bitcoin.

So, even though the creditors' claim against Genesis is for two Bitcoin and Genesis's claim against the creditor is only for one Bitcoin, under DCG's approach the setoff claimant would get none of the appreciation in the value of the Bitcoin and would instead owe about $26,000 to Genesis. Conversely, under the setoff principles' consistent use of petition date pricing, the claimant in that example would have a net claim against Genesis for 21,000 -- the $42,000 worth of its two Bitcoin, minus 21,000 worth of the one Bitcoin, which obviously makes perfect sense given that Genesis only loaned one Bitcoin to the setoff claimant and the setoff claimant had a claim for two Bitcoin against Genesis. The setoff claimant in the

example, Your Honor, is not getting a windfall just because it gets more under the setoff principles' consistent use of petition date pricing than under DCG's lopsided approach. There is no basis for treating an innocent creditor in the illogical and unfair manner that DCG proposes.

In sum, Your Honor, the evidence shows that the setoff principles are a sound exercise of the debtors' business judgment and DCG has provided no evidence to the contrary. For all of the reasons I've outlined today and for those set forth in our client's statement in support of confirmation, we respectfully ask the Court to confirm the plan in its entirety, including the setoff principles. Thank you, Your Honor.

THE COURT: Thank you very much.

MR. DREW: Good afternoon, Your Honor. James Drew, from Otterbourg, on behalf of SOF International. Very briefly, Your Honor, my objection to the plan has been resolved, so I just wanted to for the voters' sake just make a couple of statements. First of all, the two statements that Gemini counsel read into the record earlier were acceptable and I appreciate him doing that. Second of all, I understand that the debtors will be adding a provision in the confirmation order stating that any Gemini settlement will be subject to this court's approval on notice of hearing to Gemini lenders, so that also was appreciated.

So, with that, SOF is supportive of the plan.

THE COURT: All right. Thank you very much. All right, any other party in support of the plan? All right. So, I believe DCG is up.

MS. LIOU: Your Honor, Jessica Liou from Weil, Gotshal & Manges on behalf of DCG. We would propose that we actually break for lunch. It seems like an opportune time to do that, given that it's almost 1 o'clock.

THE COURT: Well, I can't quite gauge exactly how far we're in or we're not, so as a friend of mine who ran the marathon said, "I'm not running to the end. I'm just running away from the beginning." So, I do want to -- do want to chat briefly about what schedule makes sense. I'm open to whatever you all agree upon; I'll wait. My thought is, again, I don't know how long your presentation's going to be and what kind of rebuttal, and I'd rather just have a sense of how to handicap that.

MS. LIOU: Sure. Your Honor, just for our information, how long do you have today?

THE COURT: Well, I didn't think we were going to go past 5:00. It seemed to be beyond the pale, so that's what I was game planning. So -- (indiscernible discussion) So, here's -- I don't think anything since the break has materially altered the kind of arguments you're going to have. I think -- I don't think there have been any

surprises, so I would propose we just go ahead, just -- it's just easier to handicap once we've put as much mileage in the rearview mirror as we can. Absent everyone holding hands and suggesting something, but --

MS. LIOU: Okay, that's fine with us, Your Honor, but we would request we take a short ten-minute break.

THE COURT: Well, we just --

MS. LIOU: We just heard several hours of oral argument and I'd love to --

THE COURT: Let's go. Come on.

MS. LIOU: Okay.

THE COURT: Podium. Let's go.

MS. LIOU: I do need to use the restroom, but okay --

THE COURT: Again -- okay, restroom's fine.

MS. LIOU: Yes.

THE COURT: I'll be back in five minutes.

MS. LIOU: All right. Okay, thank you, Your Honor.

(Recess)

THE COURT: Good afternoon, please be seated. All right, and again just to reiterate I'm not trying to give anybody a hard time and certainly not trying to deprive anybody of a restroom break, just the longer I do this job if you haven't gotten through kind of the significant event

in the morning, you know, I don't know how we'll end up going over, but it just -- I've just seen it happen too many times. So, that's why I want to put as much -- make as much progress as we can before we break. So, with all that said, Counsel please proceed.

MS. LIOU: Thank you, Your Honor, Jessica Liou from Weil, Gotshal & Manges on behalf of DCG. And I do want to thank you very briefly for the bathroom break, it was --

THE COURT: Sure, absolutely.

MS. LIOU: -- very helpful.

THE COURT: You should never have to thank me for that.

MS. LIOU: It's the side effect of staying hydrated in this courtroom. So, I did want to say that I will be arguing the first portion of our plan objection and then turning the podium over to my colleague, Mr. Furqaan Siddiqui. We've divided up the argument as follows.

I will address the plan's distribution principles and how it violates section 1129(b), section 502(b), and the best interest's test. And that the plan proposes to unlawfully pay post-petition interest on general unsecured claims. And my colleague, Mr. Furqaan Siddiqui, will address DCG's remaining objections.

THE COURT: All right, proceed.

MS. LIOU: So, Your Honor, you've heard a lot of

arguments this morning already leading into the afternoon, but I do want to start by paraphrasing Judge Restrepo in the 3rd Circuit's recent decision FTX. Sometimes highly complex cases give rise to straightforward issues.

And here, the very straightforward question, the key question for this Court is what is its lone star in evaluating and confirming this plan? We posit that it's the bankruptcy code. And to steal a quip from Mr. Shore it's the code, the code, and the code, and nothing but the code.

Now, the Debtors have a different perspective as do the other plan supporters. In their view the overarching goal that this Court should be trying to achieve is to distribute all the digital assets of the estate and its value to the digital asset Creditors. And in this pursuit the ends effectively justify the means.

But here the Debtors bear the burden of proof to demonstrate under section 1129(b), 1129 generally, the plan is fair and equitable to the nonconsenting junior claimants and equity by satisfying the absolute priority rule and its correlate-ity (sic).

Section 1129(b)(2)(b)(1) plainly provides that a plan must provide each holder of a claim of such class that they receive or retain on account of such claim property of a value as of the effective date of the plan equal to the allowed amount of such claim, equaled to the allowed amount

of such claim.

What constitutes the allowed amount of a claim is well settled law. Section 502(b) of the bankruptcy codes says a Creditor cannot receive more than the value of its claim in US dollars on the petition date.

THE COURT: So, let's sort of cut to the chase. The argument that I've heard is that there are unsecured listed for the subordinated governmental Creditors whose claims are unobjected to, so they have allowed claims for purposes of distribution and that those claims far dwarf any remaining value. So, I guess that's a sub standing, whether you call it a standing, but it's applying the principles of paying Creditors their allowed claims. So, what's your response to that argument that that leaves DCG out of the money?

MS. LIOU: Your Honor, I would say that it doesn't, that's incorrect for a number of reasons. Standing as you know is interpreted very generously requiring only that plaintiff identifies stake in the outcome of the litigation. I think it's very clear and apparent from the record of these proceedings and the active negotiations and also later on objections filed by DCG that we very much believe that we have a stake in the outcome of the litigation.

THE COURT: But standings more specific than that,

right. There's different kinds of standings --

MS. LIOU: There are different kinds.

THE COURT: -- and different kinds of issues, right. So, I don't think anybody begrudges -- well, they may begrudge but DCG has a right to talk about its corporate governance rights and what rights it has as an equity holder and post confirmation and all those things. And so, I haven't heard anyone raise standing on that.

I've heard parties raise standing in connection with the significant amount of subordinated claims that exist that even once you discount for potential double counting you end up with a big number, we've heard eight and we've heard eleven. And so, that's far in excess of any value that the estate has by itself even before you pay customers.

MS. LIOU: Yes, Your Honor, I do want to address that. I'm going to address the two ways. One is I do want to ensure that folks are talking about the right legal standard here. Because yes there are several components to standing. But a lot of the recent case law including case law in the 3rd circuit indicates that standing should be interpreted very broadly and that in effect in bankruptcy proceedings if you're a party in interest then you actually do satisfy the requirements for standing.

But just to address the factual question that I

think is what you're getting at, the parties here in the record testimony demonstrates that none of the parties have actually had an opportunity yet to evaluate those governmental claims. In fact, --

THE COURT: But I have -- I look at what's allowed -- I look at the record I have, right, and this case has been around for a year and a half, so people have had time. And your client has, consistent with its rights, decided to object to certain things and not object to other things. So, what am I missing?

MS. LIOU: Well, just because a claim is deemed allowed does not mean that it cannot be later objected to. As Your Honor knows --

THE COURT: But for purposes of -- do you have any authority for the notion of assessing confirmation that I'm supposed to basically leave that door open?

MS. LIOU: Yes, absolutely, Your Honor. If you look at the cases for standing it's a very fact intensive analysis.

THE COURT: No, no, no, I'm asking for specific question here about unobjected to claims for purposes for what's allowed or not allowed for purposes of assessing the question of standing. That's a very specific -- again, what I understand is the other side is saying the argument is that I look at the record as of the confirmation hearing

date and that that's what I look at for what's -- for interpreting the various bankruptcy code provisions.

And so, what I'm hearing you saying is that's not what I'm supposed to look at, that that door remains open. So, I'm asking you what authority you have on that specific question.

MS. LIOU: Yes. In fact, it's the authority that the Debtors cite themselves and also, we also have separate authority, just one second and I can hall it up, in connection with In re Weinstein Company, 595 B.R. 455, Bankruptcy District of Delaware 2018. And also, --

THE COURT: So, what is, let's take this one at a time, what is the Weinstein --

MS. LIOU: In re Global Industries Technologies, Inc., 645 F.3d 201. I mean, the gist of these cases, Your Honor, is that we should not presuppose the outcome at any given point and time.

THE COURT: I'm not -- well, what do they say? What's the holding of the case, that's what I just want to know. I haven't --

MS. LIOU: Yep.

THE COURT: I haven't looked at those for this particular --

MS. LIOU: Yes, Your Honor. So, in that particular case, let's start with Weinstein Company

Holdings. In that particular case there was a requested determination that a bank claims and means under a prepetition credit agreement and subsequent DIP facility were invalid in whole or in part.

And the defendants moved to dismiss the complaint arguing that facts were alleged sufficient to establish an injury in fact to support standing to challenge the extent, validity, and amount of the bank's secured claims. There, the bankruptcy court held that the court rejects the defendant's assertion that the injuries effectively too remote to give it standing because there are numerous contingencies that must be met before it can recover, which I think effectively what the arguments are here, Your Honor. The question is not whether or not --

THE COURT: How is that -- I'm not following how that's the argument here.

MS. LIOU: Yeah, the question is not for example whether DCG will eventually succeed in disallowing --

THE COURT: No, I'm asking about a much more specific thing, I'm not asking about the ultimate result. I'm asking about the question about what I evaluate for purposes of the record of the confirmation requirements, that's what I'm asking.

And so, I under -- and it sounds like that's a litigation issue and there's lots of arguments among lots of

parties about things and that's sort of similar to DCG's filing, you know, an objection to a claim. Say, well, there's a lot of issues, Judge, you got to figure it out and it's still an open question as to what the merits of all that are.

But what I'm hearing from the other side, correctly or incorrectly, is that Judge there is no such contested issue. There's nothing that DCG has had a chance to throw its hat in the ring, but for whatever reason it hasn't.

And I, you know, at a certain point it, I'm not saying it doesn't matter to me why, but in a certain sense I don't, it's very much a set of black of white on or off issue whether DC has or DCG has, or it hasn't. And what I'm hearing from the other group of folks is they haven't and therefore for purposes of the confirmation record that's what you have.

MS. LIOU: Your Honor, there are several responses to that if I could actually --

THE COURT: Sure.

MS. LIOU: -- make my way through the several responses. So, the first is --

THE COURT: But I -- what I'm trying to, I'm sorry, this is the last time --

MS. LIOU: Yeah.

THE COURT: -- on this, but I don't generalize statements about we're involved is what I'm sort of -- that's not going to be helpful to me. It's clear DCG has been involved in this case and that's -- but that I'm asking a much more specific question. So, that's why I'm interrupting. So, please go ahead.

MS. LIOU: Yes, I understand Your Honor, but I do want to question the very underlying premise which is you have to the deem allowed amount of the claims today to determine whether or not DCG is out of the money. I don't actually think the case is that the Debtors or the other plans the quoters cite actually support that principle.

What it supports is that in the cases that were cited, Drexel and other case whose -- which name escapes me at the moment, is that in those instances equity was hopelessly out of the money and there was absolutely no showing whatsoever that equity could ever be in the money.

Here I think the facts are demonstratively different. You have heard testimony that indicates that there is the possibility of potentially recovering by DCG at some point. Now, the Debtors could not pinpoint exactly when that would be, but they've admitted on the record that there is that possibility.

In addition to that, they have maintained DCG as an equity holder under their plan and their arguments to us

and to this Court is that they've done so because there existed every possibility that equity could actually recover under this situation. And as I noted before, there has also been further testimony by Mr. Sciametta --

THE COURT: Well, I'm sorry, you were an equity holder, the question is whether you're going to recover anything. So, I don't know why you'd be not listed as an equity holder.

MS. LIOU: Well, if we were hopelessly out of the money, Your Honor, and never had an opportunity to recover under the plan, then equity would actually get canceled under the plan like many other plans that exist for insolvent Debtors. Your Honor, we've also heard --

THE COURT: But wouldn't your client object if that's what the treatment was? I mean, wouldn't it just be another version of the argument we're having now and say they can't cancel equity interest?

MS. LIOU: Correct, because our view actually is that the estate is solvent, Your Honor, right, by virtue of 502(b)'s cap on the value of the digital asset claims. We've also had testimony in this case, Your Honor, as to the facts that the liabilities of the Debtors are not yet fixed. The Debtors are openly on the record objecting to multiple claims here. And yet, we also know and --

THE COURT: And again, I'm sorry to interrupt you

but some of these things I'm not seeing. That's -- there is always the confirm ensue. I can't remember having a large case recently or maybe ever where there wasn't questions about liabilities that were going to continue after confirmation.

MS. LIOU: Correct, Your Honor.

THE COURT: And so, does that -- well, does that mean that you can't confirm the plans or what does that mean for the rules of the road?

MS. LIOU: No, it just means that here there's a substantial likelihood that the large liabilities in the subordinated class actually could be objected to and disallowed and ultimately reduced. I mean, in the several weeks since we've started this confirmation hearing alone the numbers started from 32 billion, then it was reduced by 14.8 billion in the span of a day. And now, it's gone even further down to about 10 to $11 billion. If we go another couple of weeks, it may decrease to even more.

Your Honor, I also want to answer your question about why DCG itself has not yet objected to these claims. Indeed, and I think Mr. Saferstein noted this to you in his opening, we actually do not have the information needed to mount a credible objection to those claims. And we've asked for that information from the Debtors, however the Debtors have not provided that.

As you know, as an initial matter the claims themselves were not all publicly available. We received the claims themselves, the proofs of claim as a part of the plan discovery process. And so, to the extent that we actually are able to obtain the necessary books and records to object to these claims we would be more than happy to do so.

Your Honor, I just want to go back to the point about 502. Notwithstanding about what you believe about DCG's standing, which we assert that we do have standing here to object, this Court has an independent duty to determine that the plan satisfies all the requirements of 1129 including the requirement that it comply with absolute priority rule and its corollary.

And that it complies with section 502(b). It's plain language. Section 502 defines what portions of a claim may be allowed, i.e., recoverable in bankruptcy. The plain language of that section provides, "the court after notice and hearing shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition and shall allow such claim in such amounts".

The case law unquestionably confirms that 503(b) is mandatory. Indeed, the word shall appears not just once, but twice in this particular provision. For example, in the 3rd circuit in the FTX Examiner case the court there said

very obviously that shall means shall, it's a very straightforward analysis.

And likewise, Judge Dorsey in FTX concluded the same. He, in the context of an estimation motion, determined that the court has no discretion to declare otherwise even in a crypto currency case. And he stated, "I conclude that the Debtors use of the petition date as the date for determining the value of digital asset claims is appropriate. I have no wiggle room on that. The code says what it says, and I'm obligated to follow the code". And he had cited to extensive citations briefed in the many, many objections that were interposed by parties in that case.

In addition, Your Honor, to address Mr. Shore's argument that this is inapplicable or Ms. Vanlare's argument that somehow this ruling is irrelevant, I'll note very specifically that Judge Dorsey did not say I'm only obligated to follow 502(b) of the code if the Debtor elects to do so. He determined that this was a mandatory provision where he had no discretion.

Notably, the code draws no distinction as to whether section 502(b) applies only if a Debtor is solvent or insolvent, it applies all the time unless another express provision of the code provides otherwise. And indeed, this has been the practice of decades of restructuring plans proposed before this Court and other courts and decades of

practice as indicated by testimony that we've already heard.

In over 841 pages of briefing filed, neither the Debtors, UCC, or the AHG the ad hoc group represented by some of the most experienced and sophisticated bankruptcy and restructure counsel out there can point to a single chapter 11 plan, including in the crypto currency context, that has adopted the approach they're advocating here.

Even in the context of a liquidating crypto currency platform of which there have been several, none of their chapter 11 plans have proposed to give Creditors anything other than dollarized petition date value of their claims.

And collectively, the folks who have testified, Mr. Aronzon at the transcript line 190 -- at page 193, line 23 to page 194, line 17, he has 40 years of experience and was co-chair of Mill Bank's restructuring department. And he served as a professional restructuring independent director and has proposed anywhere from 50 -- has been involved in anywhere from 50 to 100 cases and has never seen this departure from the norm of using petition day evaluations.

Mr. Sciametta also testified in the transcript at page 134 on February 27th that he's had 25 years of experience acting as an advisor and has never seen any approach other than petition date value being used to

determine claims. Mr. Geer likewise testified on February 27th, transcript page 194 to 195 that he's also had 25 years of experience and agreed that claims are traditionally and typically determined as of the petition date based on petition date values.

What the Debtors are asking this Court to do is to bless a radical departure from what the bankruptcy expressly permits and from decades of well-established practice. The Debtors admit openly that they are unable or unwilling to comply with the express provisions of the bankruptcy code that would otherwise commit the Debtors to pay Creditor claims in accordance with the terms of the loan agreements.

Number one, they cannot restate the loan agreements because they do not satisfy the express requirements under section 1124 of the bankruptcy code. They acknowledge that openly, Your Honor, throughout the record and even today in closing arguments. They have also acknowledged that they do not intend to assume the loan agreements under section 365 of the bankruptcy code either as they take the position that they are not executory.

And frankly, even if they were the Debtors would be unable to pay the cure required to assume. The Debtors have openly admitted that the estate would derive no value from actually assuming these agreements or performing in accordance with their terms. This is because the primary

unperformed obligation remaining are obligations the Debtors owed to third party Creditors.

The Debtors also do not believe that the claims arising under the loan agreements are subject to section 562 safe harbor exception. So, then, being unable or unwilling to live within these express limitations in the bankruptcy code, they ask the Court to create an entirely new, never before seen doctrine unsupported by law that gives them broad discretion to provide Creditors above and beyond what section 502(b) limitations allow. There is no name for this principle, this unknown principle, but it really is a Frankenstein doctrine cobbled together by the Debtors selecting the best pieces of various legal doctrines, none of which they are able to satisfy entirely.

And their argument to you, Your Honor, is that you should exercise your discretion sitting in a court of equity to authorize the Debtors to exercise their discretion to give away all the surplus value in the estate without basis in the code or low to a specific group of Creditors it determines in its discretion should receive that value.

And to be clear, because the Debtors themselves have made this clear, the Debtors are not truly distributing assets in kind. What they are doing is redistributing the existing assets of the estate to a approximate what they and the Creditors have unilaterally determined to be

appropriate.

Indeed, the distribution principles expressly say that they may distribute in kind, they may distribute like kind, or they may distribute nothing of the kind, it's really up to them. And apart from the guardrails the Debtors and Creditors establish for themselves, the traditional guardrails provided by the bankruptcy code have been discarded. They argue that fairness and equity demand this outcome --

THE COURT: Well, I -- as I understand it, the guardrail is the contractual obligations. So, again, I would agree with you about -- I always say I don't magic equity wand, but what I'm hearing is that there's a way to measure what the contractual obligations are if you talk about in kind crypto currency that owed and that that is the cap on recovery. Does your client believe that there's more that's being given than that contractual return?

MS. LIOU: No, Your Honor, but more is being given than the cap provided under 502(b) and that is problematic from a confirmation perspective.

THE COURT: Well, they cite a couple of things. One of which is there's some discussion of solvent Debtor and that there's case authority for less than fulsome reinstatement, so I'd appreciate your thoughts on either of those.

MS. LIOU: Yeah, sure, Your Honor. We've actually taken a look at the case on the less than full reinstatement or reinstatement light as Mr. Shore calls it. And in fact, in that particular case there were creditors who entered into individual settlements regarding the treatment of their contracts and consented to waivers under those agreements in order to have those agreements reinstated.

I will note that in that particular situation there was no objection mounted by any other party to that proposed treatment for quote/unquote "settlement of issues under the plan". And so, therefore, I do not actually think that that's a very informative example and applicable to a case where there would be an objection raised.

Indeed, I would also posit that that is not the correct approach under the law. 1124 requires that in order to reinstate you have to satisfy very specific standard. And the case law elsewhere in other context exists very explicitly to say that you cannot use a procedural rule like rule 9019 in settlement to insulate yourself from complying with other express provisions of the bankruptcy code itself.

You seen this in cases in the context of rule 60(b) and whether or not a post-consummation plan modification can be made. And the case law is incredibly clear and unanimous that you cannot do that. You cannot use a procedural rule to get around the express bankruptcy code

requirements.

In addition, I will address the solvent Debtor exception. I do want to start with first that the Debtors and Creditors main argument is that the estate actually is not solvent. And if the estate truly is not solvent than the solvent Debtor exception does not apply. I think that's fairly obvious.

Second, if the state -- if the estate is solvent and the solvent Debtor exception did apply equitable principles cannot excuse or waive the application of express code language. I think Judge Walrath in Delaware when she analyzed the similar in Hertz's restricting. See Judge's Walrath's decisions in, in re Hertz, 637 B.R. 781.

There in asserting the prepetition note holder's claim to make whole redemption premium in post-petition interest, the indentured trustees argued that section 502(b)(2) and section 502(b)(6) were distinguishable. They asserted that section 502(b)(6) imposes an absolute cap on a landlord's claim while 502(b)(2) is not absolute and in fact is not effective where the Debtor is solvent.

Judge Walrath held the court finds the distinction elusory. Section 502(b) addresses the allowance of claimants, and the indentured trustees are completing the allowing of claims with the treatment of claims. If one considers only the allowance issue, the court concludes that

section 502(b)(2) has absolute as section 502(b)(6) because it disallows all unmatured interest on general unsecured claims.

However, those sections do not reinstate the Creditors contract or state law rights to unmatured interest that has been disallowed by section 502(b)(2). Instead, as discussed below further in her decision sections 112907 and 72685 require the treatment of claims in accordance with the mandates of those sections.

In sum, she held section 502(b)(2) expressly disallows claims of unsecured Creditors for unmatured interest. When the Debtor is solvent the bankruptcy code does not waive the application of section 502(b)(2). I think that holding similarly applies here in the context of 502(b)(2) more broadly.

Second, the second -- the solvent Debtor exception has only ever been applied to the question of whether to pay post-petition interest on an allowed general unsecured claim and at what rate in a solvent Debtor case. It have never, never, ever been applied to determine the amount of the allowed general unsecured claim itself, see EG, the Ultra decision, PG Lee, and also the Hertz decision.

This makes sense as the solvent Debtor exception is an exception to the general rule that once creditor claims are fixed as of the date a debtor files for

bankruptcy, they do not accrue interest. To adopt the Debtor's UCC and (indiscernible) views to expand the solvent Debtor exception beyond its existing limits, it would be an extraordinary application indeed of the Court's equitable powers.

Lastly, the great irony here of course is that the solvent debtor exception is a judge made equitable exception that itself rises because of the immutable principle that creditors' claims are fixed as of the petition date. Your Honor, we would argue that section 502(b) demands that unless otherwise expressly provided in the bankruptcy code, claims must be capped in US dollar value as of the petition date.

And indeed, as you've heard, there have been no credible arguments mounted by opposing counsel on the other side to support a view otherwise. Pardon me, Your Honor, while I just ensure that I've covered all of the key arguments.

Lastly, Your Honor, I do want to say that I know that this is not an easy decision for the Court to make in the sense that -- in the sense that there is a concern about the impact to the Creditors here in the Genesis case. However, sometimes the Court is called upon to make very difficult decisions, decisions that may be deemed by many to be viewed as inequitable. But it is the right decision

because it's a decision that the code demands.

And I'd like to point to a recent decision by Judge Silverstein in the Boy Scouts case where she there denied a creditor motion seeking an order permitting the revocation of the prior ballot election of an expedited distribution treatment, which then entitled the Creditors to an expediated payment of $3,500 under the terms of the chapter 11 plan.

The effect of this election was that these Creditors ended up missing out on thousands, if not millions of dollars' worth of distributions under the plan. But Judge Silverstein recognized even though it was a harsh result and that the circumstances were unfortunate the harsh outcome did not permit her to ignore the plan or law regarding a Creditor's right to amend the plan.

Here Your Honor, it is a similar situation. It is a difficult outcome for sure, but the code is the code is the code. And 502(b)(2) is mandatory and the Court must apply it as it exists.

THE COURT: So, let me ask you about an ongoing discussion, well, this issue's been talked about, and it has to do with the settlement. And so, what -- if I approve the settlement what it means or it doesn't mean, and people have been talking about what various people think it means and then as well as what various other people have said that

they think it means. And so, let me just hear from you directly what, if anything, you think it if it has an impact on the confirmation issue.

MS. LIOU: Your Honor, I think the impact on the plan is going to be primarily driven by what you decide on 502(b). And so, if what you're asking is you decide in our favor on 502(b) you sustain our objection and yet you approve the New York AG's settlement with the Debtors, our position on that would be, number one, we would disagree that the law actually allows you to approve that settlement.

But number two, that the plan is unconfirmable on its face and accordingly we would need to, as Ms. Vanlare indicated, to start from scratch, develop a new plan, and resolicit votes on that new plan. And I would -- I would not put it beyond the pale, Your Honor, that with the guidance provided by this Court the parties could almost surely with that guidance reach a result that lives within that guidance.

THE COURT: Well, do you -- I asked the other side questions about the economics of it because again the New York AG's Office I think has been consistently clear in saying their view of their claim and what they've decided to settle for is restitution as measured by the contractual obligations owed to these customer victims, in their view. And so, what does it mean in your view as to the economics

if the settlement is approved and just putting aside the plan for the moment?

MS. LIOU: So, Your Honor, I again I don't actually believe that the economics of the settlement can be approved as is because --

THE COURT: Well, we're not here to reargue that, we argued that so I'm making -- I'm asking you to make the assumption.

MS. LIOU: That it is approved notwithstanding that you would rule in our favor on 502(b)?

THE COURT: No, I'm asking --

MS. LIOU: I'm con -- Yeah.

THE COURT: So, let me invite you into my world. I have a lot cases and I have a lot of motions and I have a lot of things to do. And so, I do them in a particular order, sometimes that order's debatable and not clear. But since I have all you nice smart people here, I'm trying to figure out the gigantic game of Tetris that all judges try to figure out in terms of moving things forward.

So, I'm asking you to assume that if I went ahead and decided to approve the settlement, what does that mean or not mean for purposes of your confirmation objection? That's my question.

MS. LIOU: For purposes of our confirmation objection --

THE COURT: Yes.

MS. LIOU: -- it continues to stand as it is today.

THE COURT: So, it wouldn't change it.

MS. LIOU: It's not moot.

THE COURT: It wouldn't change anything?

MS. LIOU: Yes, it is not, and I want to make that very clear because there was some suggestion by Mr. --

THE COURT: Well, there was some statement by somebody at your firm --

MS. LIOU: Well, --

THE COURT: -- that seemed to indicate something different and --

MS. LIOU: Well, if you actually look a couple of pages later there's an actual express statement and I can actually pull it up --

THE COURT: No, no, I --

MS. LIOU: -- if you would like me to, --

THE COURT: I don't --

MS. LIOU: -- that says we are not waiving our plan objection.

THE COURT: All right. So, it changes nothing?

MS. LIOU: Yes, correct.

THE COURT: All right, thank you. That was the only question I had. Anything else you wanted to add,

Counsel?

MS. LIOU: No, Your Honor, other than we would respectfully request that you sustain our objection.

THE COURT: Okay, thank you.

MS. LIOU: Thank you, Your Honor, I'll turn it over to Mr. Siddiqui.

MR. SIDDIQUI: Good afternoon, Your Honor, Furqaan Siddiqui of Weil, Gotshal & Manges on behalf of DCG. Today I'm going to present to Your Honor the various reasons why the Debtor's plan has not been proposed in good faith mainly through the structural preclusion of any practical possibility of recovery for DCG, the calculated inclusion of value-distorting provision such as the Setoff Principles, and the stripping of DCG's equity rights while maintaining DCG as a sole equity holder of GGH post effective date.

THE COURT: So, just to make life easy I understand the arguments about where the excess value should go, right. I know you made the argument that that's bad faith. I frankly my initial inclination it's people arguing about what's proper and not proper and, but I understand your argument that that also does double duty as bad faith. So, I don't know if there's a whole lot more to say about that particular question. But I am interest in anything else that you wanted to address.

MR. SIDDIQUI: Yeah, Your Honor, I mean that's

sort of, you know, where a lot of this emanates from, right? That, you know, one of core tenants of the bankruptcy confirmation is that a plan must be posed in good faith and not by any means forbidden by law. Here, you know, the good faith requires that, you know, that --

THE COURT: Well, but I think that's what the bankruptcy code says.

MR. SIDDIQUI: Yeah, yeah, yeah.

THE COURT: If it's privative by law and you say well you can't do that and you say can't do that.

MR. SIDDIQUI: Right.

THE COURT: I don't know that every disagreement about whether the code allows you to do something or not turns into a bad faith discussion particularly because whether you agree with it or not, whether I agree with it or not, I think the explanation has been given that they're, the Debtors, are trying to repay customers in kind. So, which frankly doesn't seem to be a particularly nefarious goal whether or not it's permitted under the code of 502 and all those things is a different question.

MR. SIDDIQUI: Right, yeah, Your Honor. I don't think that we would, you know, we're sort of lodging any sort of nefarious accusation, it's more so just complying with the bankruptcy code and sort of looking at that in light of the fact that fiduciary duties are owed to the

estate as whole, right, not just creditors, but also equity holders and you know other stake holders as well and parties in interest.

And the amended plan that's before you today, Your Honor, does not consider the rights or interests of DCG whatsoever. You know, not just through the distribution principles, but also through various other provisions that I'll walk through today. So, Your Honor, if I may I'm happy to actually just go straight, you know, --

THE COURT: Yeah, please.

MR. SIDDIQUI: -- to the other sections. All right. So, starting off with the Setoff Principles. Your Honor, the Debtors propose Setoff Principles which are attached as Exhibit M to the plan supplement at docket number 1144, artificially depress the value of the estate's assets while inflating select Creditor's claims. And in effect they forgive significant portions of the Debtor's claims against only a certain number of Creditors.

THE COURT: So, what's the standard I'm supposed to apply in assessing set up principles?

MR. SIDDIQUI: So, Your Honor, it, you know, I think the counsel for Mr. Gorisse was actually right in that it actually is somewhat discretionary, however, when there's a fundamental course on principle here that chapter 11 Debtors typically follow and it's the idea that you maximize

the value of the estate and through these Setoff Principles it very apparent in the numbers themselves that the math -- that the Debtors are actually minimizing the value of the asset -- of the estate's assets and maximizing claims against the estate.

THE COURT: But in terms of exercising discretion the argument is made that I'm being asked to take heads you win, tails I lose kind of approach to say even though we're talking about the same asset, I'm going to value it one date for these things and another date in the context of the assets.

So, somebody who invested two bitcoins to the prior example suggested it's going end up, you know, in a much worse situation. So, while I know there's been a lot of discussion about how I'm not entitled to consider equitable principles in lots of other context, I think everybody seems to think that that's the test here. So, what's your response to that kind of argument that's been made about it being an unfair way to view it?

MR. SIDDIQUI: I mean, Your Honor, that's just sort of, I think, just how bankruptcy works, right? The chapter 11 Debtor has 502(b). As of the petition date the claims are capped, as we argue claims are capped as of the petition date. The amount that is Setoff, the counter party has in terms of its claim against the Debtor is as of the

petition date. The Setoff counter party is not a chapter 11 Debtor.

So, it's unclear why they would be able to utilize section 502(b) to cap their claims as of the petition date when, you know, under the current plan the Debtors don't seem to be doing that either when you look at it conjunction with the distribution principles.

And Your Honor, if I may, I mean it's actually not -- it's actually even inconsistent with the way the Debtors have valued other digital asset loan receivables. If you may recall, you know, DCG and DCGI have certain year term loans that were due to GGC that were paid off as of January 5th. A good portion of those loans were actually in BTC, and the Debtors sought, you know, an -- or commenced an adversary proceeding before Your Honor, which I believe to be --

THE COURT: Do I have that in front of me? I don't know that I --

MR. SIDDIQUI: I think it's at -- what's the adversary proceeding, 23 --

THE COURT: No, I'm saying in terms of arguments, I'm just trying to -- I'll look later, never mind, sorry.

MR. SIDDIQUI: Okay, yeah. I mean, Your Honor, the point that I'm trying to make is that, you know, DCG owed or DCGI to be specific owned GGC, BTC, and estate had

that as an asset, that loan receivable. And the estate did not seek nor did DCGI repay the BTC value as of the petition date. So it's unclear why the Debtors would now be seeking the petition date value of claims that it has against other setoff counterparties. And it's just -- not only is it inconsistent with the way that they've acted in this case with respect to other parties and other digital asset loan receivables, but it sort of kind of turns the concept of setoff valuation upside down because it's benefitting a select few influential creditor groups.

THE COURT: Well, but let me ask. Was there any objection to that? Again, courts are not -- parties reach lots of conclusions and make lots of determinations and a debtor-in-possession does a lot of things. Was that issue raised at the time?

MR. SIDDIQUI: You mean by either parity?

THE COURT: By anyone.

MR. SIDDIQUI: Right. I mean, Your Honor, I don't think that we thought, you know, in our wildest dreams that we could actually pay the Debtor petition date value of BTC. And that's why we were actually also pretty surprised that it's --

THE COURT: Well, I guess my thought is no one is asking you to opine about it.

MR. SIDDIQUI: Yeah, yeah, of course. I'm just

showing sort of inconsistent sort of, you know, valuation methodologies within this case itself. Right? I mean, I think the general point is that Chapter 11 debtors have a duty to maximize the value of the estate, and they can use all the tools in Chapter -- under the Code in their arsenal to do so. And when it comes to the setoff principles, it seems like they are doing the opposite. They are minimizing the value of the estate's assets and maximizing the value of claims against them. And it's for a select group of 21 creditors whose names are conveniently redacted. And it provides about a $288 million windfall to those select few, which actually could go to the general -- the rest of the general unsecured creditor body, hopefully including equity.

So with that, Your Honor, we just would like to sort of -- we would request that this Court not approve the setoff principles attached as Exhibit M to the proposed plan for the reasons set forth in our papers and on the record today.

THE COURT: All right.

MR. SIDDIQUI: Next, Your Honor, I would like to go on to the voting rights and the way that the Debtor's plan impermissibly cuts of DCG's voting rights despite the fact that DCG will continue as a sole equity holder of GGH post-effective date.

Specifically the plan provides that DCG shall have

no economic interest, voting interest, or right to influence, direct, or otherwise control GGC or its subsidiaries, nor shall it have a right to transfer its interests in GGH.

Now, not only does this violate the Bankruptcy Code, but also violates applicable Delaware law. As is commonly known, traditional shareholder corporate governance rights are not impacted by the pendency of a Chapter 11 case. In fact, Delaware state law, which is applicable here, Recognizes that the fundamental governance rights possessed by shareholders is the ability to vote for directors that the shareholder wants to oversee the company.

THE COURT: So what are we actually talking about in the context of a liquidating debtor?

MR. SIDDIQUI: Well, Your Honor, I mean, typically you'll have liquidating debtor's plan -- full-on extinguishment of an equity holder's rights and the full-on extinguishment of equity. Right? But over here we are being -- we are --

THE COURT: But if that's the norm, isn't this Debtor -- I mean, is this any different than the norm? I'm just -- again, I heard somebody earlier say that, that the rights weren't -- that you would normally expect to see an extinguishment of rights, and then I think I responded. But then I think I'd seen objection. And so I'm not quite

understanding if that's what's normally and how I'm supposed to understand the objection as to this particular provision, which seems to be, while you're not happy with it, seems to be less draconian than what's normally included in a liquidating plan.

MR. SIDDIQUI: Well, I think it also comes down to sort of -- you know, if the Debtor is sort of hopelessly out of the money and equity is being extinguished, then obviously the rights would naturally follow in terms of being extinguished. But here, A, I think we're arguing today that we're not hopelessly out of the money. In fact, it's our position that the Debtor is solvent. But regardless, the plan before you today, the Debtor is keeping DCG on as the sole equity holder of GGH, but it's stripping all of its rights while keeping it on for -- you know, it's almost like cherry-picking to take advantage of certain tax benefits. And, Your Honor, that is a problem.

THE COURT: So let me ask what is it that your client wants to be able to do that it can't do, just to sort of put a more blunt point on it?

MR. SIDDIQUI: Yeah. Sure, Your Honor. So right now the plan prohibits DCG from electing directors other than from selecting from a list of five candidates selected by the Debtors and certain influential creditor groups. You know, those directors. And in no event can DCG terminate

any member of this new board following the effective date.

The plan also contemplates eliminating DCG's right to transfer its interests in GGH and doesn't provide a basis for doing so. The plan also cuts off DCG's beneficial --

THE COURT: Well, right. I've certainly seen that in the context of tax issues, right? Change of control. So is that the circumstance where there are tax -- because of the tax consequences, or am I missing something?

MR. SIDDIQUI: I mean, it very well may be, Your Honor. But be that as it may, if we are --

THE COURT: Because bankruptcy courts, we get those kinds of motions all of the time. They're substantial and they essentially reference the tax consequences of the change of control. And certainly transferring would I think constitute that kind of an event, right?

MR. SIDDIQUI: Right, Your Honor. But --

THE COURT: Maybe I'm singing from the wrong sheet of music, but just help me out here.

MR. SIDDIQUI: Yeah. I think typically, Your Honor, what will happen is they'll have a -- the way that I understand it, Your Honor, is that if we are to maintain our position as the sole equity holder of GGH, then there is no basis to prohibit us from having the rights that an equity holder has. And the way that -- and actually in fact the way that the Debtors have promulgated in their reply is that

DCG's rights actually do spring back upon payment in full to creditors under the distribution principles. And once everyone is paid back under the distribution principles, DCG will have everything it wants back and there's no harm, no foul. However, as I think has been stated today and, you know, two weeks ago during the testimony it's been made clear by the Debtor's advisors that it really is unclear when creditors will be paid back in full under the distribution principles. Because as has been stated, as claims arise so do -- sorry, as digital asset prices rise, so do the claims themselves. And to basically kneecap DCG in holding the equity in perpetuity, or at least, you know, there's no sort of timeframe that we know of when we get our rights back --

THE COURT: Well, let me ask you. So does the resolution of this issue ride on whether I find solvent or insolvent here?

MR. SIDDIQUI: I think, Your Honor, if the Debtor was insolvent and equity was being extinguished, that's one -- perhaps there's a better argument that rights should be extinguished because equity is being extinguished. But where --

THE COURT: Well, is there an objection to that if that's the determination that it follows the usual path that there's -- if you have an insolvent debtor and the rights

are extinguished as opposed to this -- what's in the plan?

MR. SIDDIQUI: Well, I think, Your Honor, we would respectfully disagree that they are insolvent. But in the event --

THE COURT: No, I understand that. But I'm just trying -- again, as you probably can tell, the theme of the day is to tease out different options. And I really -- you know, because I have all you nice, smart people here to ask these questions. So my apologies for torturing you and others with hypotheticals. But that's why I'm asking. If that's what the determination is, does that moot out that issue. Because then it's just a question of the equity rights being nonexistent.

THE COURT: I think that DCG would perhaps maybe less sort of -- you know, I think we would have to sort of assess it based on whether or not we in fact believe that the Debtor is solvent. Right? Because I think --

THE COURT: No, no. I'm saying if I made the determination. I'm not asking you to volunteer for that finding. I'm just saying if I made that determination, does this moot out that issue?

MR. SIDDIQUI: If you make that determination and the equity is being extinguished, then I guess it would follow that equity's rights should also be extinguished, Your Honor.

THE COURT: All right.

MR. SIDDIQUI: But here that's not the case today.

THE COURT: No, I understand.

MR. SIDDIQUI: Yeah. I mean, so going from that, I think that cutting -- keeping DCG as equity holder in name only but basically taking away all of its rights is not only a violation of 1129(a)(3) because it's not proposed in good faith and is a violation of fiduciary duties, but it is actually more specifically a violation of Section 1123(a)(7), which requires plan provisions to not only be -- to be consistent with the interests of creditors and equity holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan.

Now, this proposed dismantling of DCG's voting rights, while it might be consistent with what the creditors want, is certainly not consistent with DCG's interest as equity holder, nor is it consistent with Delaware public policy. And furthermore --

THE COURT: So what are the full array of rights that you think should happen in this context, right? So if your client stays on, you think they should have the right to sell. Does that present any problems in terms of if the plan is approved of being able to go forward with the plan?

MR. SIDDIQUI: I think that if there is a

prescribed time limit for the ability to transfer interest, perhaps that's one thing. Right? If the plan is approved or not. But at this moment just not having the right to transfer interest in their own --

THE COURT: No, I understand what the argument is. Again, I'm teasing out options. So I'm trying to figure out what approval or disapproval means to various arguments that are coming in front of me. But maybe I'll just leave it there.

MR. SIDDIQUI: Okay, Your Honor. So another sort of point here is that the Debtor's point in their reply that the plan states that the new governance documents will comply with Section 1123(a)(6), but it actually doesn't mean they do so in practice now. If you may recall, Section 1123(a)(6) explicitly prohibits the issuance of new non-voting shares.

Now, Your Honor, while we do understand this is not a new issuance but rather a reinstatement of shares, it practically is the same thing. Certain of the cases that the Debtors have cited in support of their argument that 1123(a)(6) don't apply are actually mischaracterized in a way. Both In re Texaco, which was cited by this Court and also In re Acequia, decided by the Ninth Circuit explicitly held that Section 1123(a)(6) and Section 1123(a)(7) must be read together. In fact, the In re Acequia court went to

explain that when you look at those two provisions together, courts must scrutinize any plan which alters the voting rights or establishes management in connection with a plan of reorganization whether or not the plan provides for the issuance of new securities. There the court considered the shareholders' interests in participating in the corporation and the overall fairness of the plan provision. And when you apply that here, you will find that the court -- even though the Debtors are seeking to reinstate and not issue new non-voting securities of DCG, the fact that DCG is unable to exercise really any of its rights -- and I mean any of its rights other than to just choose from a slate of directors that DCG can then never remove until folks are paid back under the distribution principles --

THE COURT: I guess I'm again sort of struggling with what the practical consequences are. I know what the words mean and the rights you're citing. But I'm trying to figure out what they mean in the context of this liquidating plan and what is is that your client wants to do in terms of how your client is being harmed.

So I get the idea of not being able to sell. Right? that's pretty straightforward. And we can debate about the significance of that. But for the other issues, I'm trying to figure out what it actually -- you're talking about not issuing new shares of a liquidating company.

MR. SIDDIQUI: Right.

THE COURT: And so I'm trying to figure out what it is that your client wants to be able to do and how your client's ox is being gored to invoke the language of the standing cases.

MR. SIDDIQUI: Well, I think we should have the ability to -- any rights that we have under Delaware law should maintain here.

THE COURT: I get that. I get that. But humor me with explaining what in god's name that means in the context of this liquidating Chapter 11?

MR. SIDDIQUI: To select --

THE COURT: Theoretically you could do a lot of things, but that actually aren't going to happen because you've got a liquidating 11.

MR. SIDDIQUI: Right.

THE COURT: So that's what I'm trying to get at. It seems like an invocation of certain things as a matter of I'm going down the Code, this is a problem, that's a problem, the other problem. But we're a fairly practical lot here in bankruptcy court and I'm trying to figure out why does it matter. What is it that this is -- how is this impacting parties' rights? So I understand the formula. Everything we can't do now that you're taking away from us, that's our objection. I get it. But I'm trying to get at

what the significance of any of that is.

MR. SIDDIQUI: So we would like to have the ability to select a new board without having to choose --

THE COURT: All right. I give up. Go on to your next point, please.

MR. SIDDIQUI: Okay. We would like to -- furthermore, Your Honor, I think as sort of stated and I think going off from what you were asking earlier, we believe that DCG should actually also have consultation rights over the Debtor's winddown. Our argument is that the amended plan is not proposed in good faith because it excludes DCG from certain rights over the winddown including selection of the PA officer and the selection of the members of the --

THE COURT: Well, if you are opposing the plan, which is your right to do, and the customers, who are the creditors, have a very strong view about your client, why does it make sense to have consultation rights? If there was a request for consultation rights, wouldn't I have -- if there was a grant of consultation rights in the proposed plan, I suspect I would have a lot of objections to that. So why does it make sense in the context, again, of this case that that that be something that happens?

MR. SIDDIQUI: Well, because, Your Honor, if DCG is right that there is excess value in the estates, then

that would flow to equity. And therefore DCG should have a role. Because DCG could receive distributions under the plan, it should have consultation rights over the winddown.

THE COURT: So the consultation rights -- that's an objection that rises or falls in connection with your view about solvency?

MR. SIDDIQUI: Right.

THE COURT: All right.

MR. SIDDIQUI: As of right now, I mean, it hasn't yet been determined. But there is the possibility. And because there is the possibility and DCG is a majority part in interest, it should have at least -- not a consent right, but a consultation right over the Debtor's winddown. We want to have a role here. We want to have a role in the section of the PA officer and in the selection of the members of the winddown oversight committee. And in fact, the litigation oversight committee as well. And for any matters in which the Debtors are --

THE COURT: Isn't the litigation committee going to be suing your client? I mean, again, that's why I'm asking about these things in the practical consequences of this case.

MR. SIDDIQUI: Your Honor, the same thing with Gemini.

THE COURT: I would imagine if your client was

asked whether it wants to be sued in connection with its consultation rights, we all know the answer.

MR. SIDDIQUI: This is the same thing with Gemini and the recusal mechanisms that were set in place. And DCG would properly recuse itself for any matters regarding DCG being a defendant in any of these actions. But to the extent that there are any other causes of action, I think DCG has an interest in those. So we would request to be on that as well.

THE COURT: All right.

MR. SIDDIQUI: And, Your Honor, I think in conclusion, these provisions are the result of concerted efforts of the Debtors, the UCC and the Ad Hoc Group to basically deprive DCG of valuable economic and corporate governance rights should result in the plan that violates the Bankruptcy Code. The Debtors aren't only just stripping DCG of all excess value of the estates for the distribution principles, but are also methodically dismantling DCG's governance and economic rights as GGH's sole equity holder. And when you consider these terms in the totality of circumstances, it demands the conclusion that the amended plan has not been proposed in good faith as required by Section 1129(a)(3) of the Code. Accordingly, the amended plan should not be confirmed.

I actually have two or three more additional minor

items that I also want to clarify for the Court.

We understand with respect to the indemnification obligations, we understand that the Debtor has made some changes to the indemnification obligations definition. So that, you know, there was no sort of improper cherry-picking on which employees were to be indemnified under the corporate governance documents as long as these obligations are -- as long as the indemnification obligations and what the Debtor are seeking to do is not in violation of Section 365 and are being --

THE COURT: Now is the time for you to tell if it is or it isn't. I don't want to leave here today not knowing the answer to that.

MR. SIDDIQUI: Based on our review, it doesn't seem like they are. So we have nothing further to add on that point today, Your Honor.

THE COURT: All right.

MR. SIDDIQUI: Lastly on the allowance of creditor fees and expenses against the estate, we would just simply say we join the U.S. Trustee in its objection to the allowance of the Ad Hoc Group and dollar group fees as administrative expense claims.

THE COURT: And that will apply in all cases that Weil may come in front of this court as well, right? I assume that Weil will take a consistent view about that.

MR. SIDDIQUI: Duly noted, Your Honor. And lastly on the tax sharing agreement. So, Your Honor, we understand that the Debtors have stated on the record that not withstanding Section 4(b)(1) of the plan, which provides that the winddown debtors will undertake the restructuring by, among other things, executing and delivering a tax sharing agreement with DCG, we would like to clarify in the amended plan that DCG does not have an obligation to enter into a tax sharing agreement with the debtors. While we have agreed with the Debtors that we will negotiate one in good faith, we have explicitly stated that we don't have an obligation to do so, and we would just like the plan to verify that.

THE COURT: Well, does that depend on what views I take of your corporate governance rights in other contexts? Right? I mean, I don't want to get all deep dive into tax issues here. But, right, a group and the obligation to file consolidated return comes up in various bankruptcy cases. I can think of Global Crossing being one from way back when. And so I don't know what factors trigger into that and what the IRS's views are. So is it possible that your views on corporate governance may sort of stumble into that?

MR. SIDDIQUI: I think a tax-sharing agreement is sort of a consensual agreement amongst parties whether or not you're in a consolidated agreement. So I don't think it

would actually impact that. Right? Whether or not we're in a consolidated --

THE COURT: All right.

MR. SIDDIQUI: So with that, without anything further, Your Honor, unless you have any questions, I would like to cede the podium to whoever is next.

THE COURT: All right. Thank you very much.

MR. SIDDIQUI: Thank you.

MS. VANLARE: Good afternoon, Your Honor. Jane VanLare, Cleary Gottlieb Steen & Hamilton on behalf of the Debtors. I'm going to address just a few points made by counsel to DCG. I will be brief. And I'll go in reverse order. I'll address some of the points made by Mr. Siddiqui and then address some of the points made by Ms. Liou.

So first on the setoff principles. Again, Your Honor, it's been articulated earlier by us and others, there's no evidence to substantiate any of the remarks made, including those by Mr. Siddiqui even in his presentation today regarding inflating and creditor claims and selective application. That's simply not true. It's not in the record. In fact, the opposite is in the record as I referred to in my earlier presentation with respect to the fact that the setoff principles are consistently applied.

THE COURT: Well, let me ask you about that. It seems like the setoff principles -- there may be an argument

that the setoff principles work in a particular way. But am I right in understanding that there's a certain amount of happenstance in that in terms of whether -- and I think Mr. Shore had said this is when we entered into a deal, this is where the prices are. Nobody really knew -- we entered into a deal not really knowing what the prices are going to do. Nobody knows. And I assume the setoff principles are a similar kind of agreement, meaning that at a certain point people reach that agreement, it is what it is, the prices go up, go down. And what it actually will mean at the end of the day compared to the alternatives is going to be a function of that.

MS. VANLARE: Yes, Your Honor. I would say the setoff principles came out of extensive analysis done by counsel to the Debtors by financial advisors to the Debtors, discussions that we had with multiple parties-in-interest. We determined that that was the best approach and exercised our business judgement to do that. And I think that's in the record. And there's simply nothing in the record to suggest otherwise.

I would also like to address briefly Mr. Siddiqui's citation to the DCGI loans. And we think that's just simply inapplicable. That was a payment done pursuant to a settlement. That was an agreement with the Debtors and furthermore didn't actually include setoff.

Secondly, he made a point regarding extinguishing voting rights, consultation rights. And I think as Your Honor aptly pointed out, it is obviously -- would be incongruous with the fact that potentially the biggest asset of the Debtors here is litigation against DCG. And obviously DCG can't control that.

And we do think that there really is no burden to them of maintaining the equity as the plan proposes. And it can be viewed as a benefit in that the plan does provide that the equity rights will spring back if the creditors are paid in full.

THE COURT: Well, let me ask about the point that -- and I think I was trying to get at it somewhat unartfully in my questioning -- is that it's the selective. You're sort of in, but you're not in, meaning you're the equity holder, but you don't get those rights as opposed to saying you're out. And if you're out, you're out. And we all get that. And so -- and that seemed to be on questioning sort of the complaint.

MS. VANLARE: Yes. And I think, Your Honor, the baseline is that they're out. And so the fact that it's retained I think is actually a benefit to them. So the --

THE COURT: But what if they don't view it that way?

MS. VANLARE: So I think the fact that, for

example, the restriction in terms of the transfer of GGH interest, that's a continuation of the NOL order. And so that's something that we are entitled to. As far as the -- they do have certain governance rights or a modified voting right, so to speak, by being able to approve members of the board. We think that that's actually a response in fact, a partial response to their objection to 1123(a)(6).

The other one, which is actually my next point, the other one being that as I think Mr. Siddiqui pointed out or Your Honor pointed out, we're not actually issuing shares. So it doesn't apply.

With respect to Ms. Liou's arguments, first, she said that it's part of the record or Mr. Aronzon had testified that there may be distributions to equity here. And that's not actually what he testified, Your Honor. And I think you actually pointed this out earlier in my presentation. When addressing the question of whether it would be possible for value to flow down the waterfall, he did testify that, yes, it is. And that's on Page 207. But as we discussed earlier, that doesn't mean it goes down to equity. We have the billions and billions of dollars of subordinated claims.

There was also a point around the subordinated claims and the fact that they haven't been objected to because they haven't had a chance to review the books and

records. There is no indication that we have, and certainly none in the record that there was any attempt made to review books and records. As Your Honor pointed out, that was a strategic decision on their part not to object to those claims. And under 502(a), they are deemed allowed as of today.

Finally, one other point. Ms. Liou I think was very complimentary of the Debtors, professionals of Mr. Aronzon and of other advisors in this case when she noted everyone's years and years of experience. We do appreciate that, and I think it's correct. And I think it actually is something that speaks to the fact that this is the right result. The plan is the right result because all of our hundreds of years of restructuring experience tells us that this is the right approach.

Finally, on this point around the code and the statute, you've got to have the statute. I think it's instructive given DCG's argument that I think everyone agrees, and I think they don't dispute based on their presentation that equity is on the side of this plan. Equitable considerations dictate this plan should be approved. Efficiency is on the side of this plan. Again, I think everyone has said, and I don't think they dispute that it's far more efficient, it's the way that we can get distributions to creditors as quickly as possible.

And so the only argument that they make is that, well, you can't -- you've got to follow 502(b). And I'll quote Ms. Liou. You can't use a procedural rule to get around the requirement of the Code. And I think, Your Honor, that we have given you and we've cited many ways in which we are absolutely consistent with the Code, we're absolutely consistent with 502(b). I won't recite all the various arguments we've made. It's the fact that in fact there's been no proper objection. And so again, if we're going to be very strict about the interpretation of 502, it does not apply because there's not been a proper objection to these claims. Moreover, there's no cap in the language. Again, that's a statutory argument. We've made other arguments. So I do think that, again, it's equity, it's efficiency, and it's absolutely the Code, Your Honor. And with that, we would urge you to overrule DCG's objection and approve the plan. Thank you.

THE COURT: All right. Thank you very much.

So let me ask if there's anyone else who wishes to be heard to round out the record as to DCG's objection.

All right. Hearing no party wishing to be heard, I think that completes that one of three things we're trying to accomplish today. I think there's an expectation that the second and third things will be shorter. So let me ask counsel how you propose to proceed.

MS. VANLARE: Your Honor, we are ready to keep going. But obviously --

THE COURT: Well, how long do you think that's going to take? I'm fine. I used to do Chapter 13 hearings from morning to sometime about 6:00 and not leave the bench, which my wife considered cruel and unusual punishment to those appearing in front of me. But I said that was not my rule for them, only for me.

So I'm happy to go ahead. If it's going to take another two hours, I would think it makes sense to take a break. But we can also see how we go and see where we are at 2:30.

MS. VANLARE: Your Honor, I think our best estimate when looking around, I think our best estimate is that the McDermott Group objection will probably take about an hour. That's for all the parties. And then we have the U.S. Trustee objection, which I'm looking at Mr. Zipes, I don't think will take very long. Maybe 15 minutes would be my estimate. And then, Your Honor, it's the 1129 factors. And I can be as quick or as long on those as you would like.

THE COURT: Well, let's see how it goes. I'm game for that. If somebody does have a medical condition, somebody needs to get some sugar in them, whatever it is, I do not want to compromise anybody's health. But otherwise we'll plow ahead.

MR. MASSEY: Good afternoon, Your Honor. Jack Massey, Cleary Gottlieb Steen & Hamilton, for the Debtors. I'll be addressing the argument made by the Crypto Creditors' Ad Hoc Group, or I should say the Debtor's argument against that argument that the CCAHG Group's contracts are entitled to admin expense priority. And then my colleagues, Mr. Kessler, will address the CCAHG's argument that their claims are subject to the 562 safe harbor.

Before addressing the argument, I would just like to very briefly discuss the relevant background facts. The CCAHG is a group of -- as of the most recent 2019 statement, 7 creditors. And that's compared to 85 creditors in the Ad Hoc Group who loaned funds to GGC under master borrowing agreements or MBAs that governed the terms of the lending relationships between those creditors and the CCAHG members. And then term sheet loan agreements that govern the terms of individual loans.

The MBAs and the term sheets are joint exhibits. For the record, 5 through 27, 29, 31 through 35, and 37 through 52. These MBAs and term sheets are all very similar to each other and they are very similar to the lending agreements between GGC and many of their other lenders.

These seven creditors nevertheless seek different treatment than all of those other creditors on two separate

theories, as I mentioned. The idea that their claims are actually admin priority claims and the idea that the contracts are safe harbored. So I will go now to the admin claims argument.

Section 503 provides priority treatment for claims that arise from the actual necessary costs and expenses of preserving the estate. The classic examples of these are the cost of reorganizing the estate itself in the case of a Debtor that is still an operating business, the cost associated with maintaining that business like purchasing inventory and paying employees. These are by definition post-petition transactions because pre-petition transactions are transactions with the company before it is a debtor in bankruptcy. And those kinds of transactions give rise to ordinary prepetition claims.

The CCAHG contracts and the transactions that give rise to their claims are clearly those kinds of prepetition contracts. All of the MBAs and all of the term sheets were executed prior to the petition date. And that's not a fact in dispute. But the CCAHG argues that because the contracts are renewed post-petition, that autorenewal transformed all of the Debtor's obligations under the contracts into post-petition obligations. This is wrong as a matter of law and would lead to a wildly inequitable result with the CCAHG members receiving effectively priority over all other

creditors, many of whom are similarly situated just because their framework contracts happen to have autorenewal clauses.

Courts in this circuit and across the country have consistently held that auto renew clauses like this do not generate new transactions for purposes of determining whether the transaction that gave rise to the relevant claim took place prepetition or post-petition. One example of this is Judge Kaplan's holding in In re Ditech Holding Corporation. That's at 630 F. Supp. 3d 554, 557 (S.D.N.Y. 2022). There are many other examples.

Instead, course hold that an autorenewal is a continuation of the original contract. And here the autorenewals bear no characteristics of a new transaction at all. There was no new property, for instance, exchanged in connection with the autorenewals and neither party agreed to any new or different obligation than what they had been obligated to do previously.

And importantly, the MBAs were not even the contracts under which the parties had any of their standalone obligations. The MBAs merely contained the terms by which the parties would transact if they chose to transact. And it was the term sheet loan agreements by which the parties actually did transact. Those were all executed prepetition. Again, not a disputed fact. And

there are no provisions of those term sheets that would renew any of those loans during the period that ended up being the Chapter 11 case or any other period.

THE COURT: So I'm understanding this right, it's the -- the term sheets don't renew?

MR. MASSEY: The term sheets themselves do not renew.

THE COURT: Do not renew. It's the borrowing agreement that renews. But again, I think you just said the borrowing agreement is what essentially contemplates the term sheet.

MR. MASSEY: Exactly.

THE COURT: But it isn't a contractual -- I mean, it isn't a binding agreement in and of itself. You have to take further steps to make that happen.

MR. MASSEY: Exactly. No loan transactions are effectuated pursuant to the Master Borrowing Agreements. But once a loan transaction is effectuated by way of a term sheet loan agreement, then there are certain obligations --

THE COURT: It's almost an option agreement in some ways.

MR. MASSEY: Exactly. So the Debtor's position is that the Court can end its analysis there because a prepetition transaction cannot give rise to an admin priority claim, full stop. And no post-petition transaction

took place. But even if the autorenewals of the MBAs were somehow post-petition transactions, administrative expense priority also requires that the transaction in question provide a concrete, actual benefit to the estate. The CCAHG here has not argued and cannot argue that the Debtors used the loaned assets in any way and recall that the way that Debtors would have used the assets would have been un-lend them to other borrowers. And all of that type of activity had ceased before the petition date with respect to the borrowed assets from the CCHG members and all other lenders.

So as a result, the assets loaned to GGC, the assets in question essentially, have sat idle in GGC's accounts for the duration of the Chapter 11.

The CCAHG then suggested that the Debtors have derived a benefit from being in possession of these loaned assets during the Chapter 11 because the increase in the asset's value creates more value for distribution to the Debtor's other creditors. This argument is also a red herring. The CCAHG cites no authority for it and the Debtors are aware of no authority supporting this very specific argument.

First of all, the Debtors themselves do not benefit or suffer from the change in value of the assets that they hold, whether that's an increase or a decrease. Any change in value of the assets that the Debtors are

distributing pursuant to the plan -- I should say that the plan contemplates distribution of are happening in kind. So the dollar value as of any particular day is neither here nor there for the perspective of the Debtors.

And from the perspective of the estates, including the creditors, the estate also do not benefit or suffer from appreciation or depreciation of the assets because the claims by and large are denominated not in U.S. Dollars but in kind.

So the CCAHG's argument that the extent of appreciation of their assets should give rise to the admin -- to an admin claim would reach an absurd result in all cases. There is no principled reason to stop the analysis there. And by that logic, the Debtor's retention of the assets themselves, not just the appreciation of the asset's value, is creating the very value that is available to the Debtor's other creditors for distribution. And by that logic, any asset or any value of any asset that's retained by a debtor in Chapter 11 should give rise to an admin claim, which is not what the Code contemplates.

Unless Your Honor has any further questions, I'll turn the podium over to Mr. Kessler to discuss the 562 argument.

THE COURT: All right. Thank you very much.

MR. KESSLER: Good afternoon, Your Honor. Tom

Kessler from Cleary Gottlieb for the Debtors. As Mr. Massey mentioned, I will be addressing the CCAHG's argument in the alternative, that if their claims are not administrative expense claims, that they should be valued as of the effective date rather than pursuant to the distribution principles.

This argument relies on an assertion that the CCAHG contracts are executory contracts that will be rejected on the effective date pursuant to the plan and that therefore Section 562(a) requires that the claims be valued on the effective date.

The argument fails for the simple reason that the CCAHG contracts are not executory and therefore they won't be rejected pursuant to the plan, and 562(a) simply doesn't apply.

When courts are faced with assessing whether a contract is executory, they typically assess whether there are material unperformed obligations on the part of both parties. A typical loan contract therefore is not executory because the lender's only material obligation to make the loan is performed at the outset. All that's left for the lender to do is receive repayment, which requires no real action by the lender. They're not obligated to do anything.

In their briefing, the CCAHG runs through 19 contractual requirements that they clam are material and

unperformed. And we discuss in our confirmation brief at length why none of them are sufficient to render the contracts executory. And I'll recap that just briefly.

First, eight of the 19 obligations are obligations of the Debtors, and nobody contests that the Debtors have material unperformed obligations. After all, they have to repay the loans in question.

The next six of the 19 are not obligations at all. They are entirely contingent and triggered only in the event that the parties decide to execute certain forms of loans or undertake certain kinds of agreements which they are under no obligation to do. So you'll see that most of them have to deal with the treatment of collateral or how call options would work. But of course none of the loans that the CCAHG has outstanding with the Debtor are collateralized and none of them contain call options.

The CCAHG cites solely In re Hawker Beechcraft from Judge Bernstein, which includes the statement "Contingent obligations are sufficient to render a contract executory." But there were no contingent obligations in that case, to be sure. Judge Bernstein mentions the concept of contingent obligations in passing in the standards section, and the court ultimately found there that the obligations that were at issue were material solely on the basis that the parties had expressly stated the non-

performance would render a material breach.

By contrast, courts that have looked specifically at contingent obligations and whether they rise to the level of executory have distinguished between true option agreements, those are agreements that obligate a party to perform actions upon their counterparty exercising certain rights as opposed to situations like here where both parties have unfettered discretion as to whether the contingency will ever arise. We cite many examples of those in our brief. One of them that I think is the most on point is BNY, Capital Funding v. US Airways. And that's at 345 B.R. 549.

So that leaves us with five remaining obligations of the 19. And those five are the sorts of immaterial provisions that courts routinely reject, including indemnification obligations, confidentiality obligations, and arbitration provisions. And again, in our brief we go through examples of each of those and how courts have held that they're not enough to render a contract executory.

I want to pause for a moment to talk in a bit more depth about an obligation that the CECAHG seems to rely on most heavenly -- heavenly -- heavily. Your Honor will recall actually it was the sole subject of live testimony at the confirmation hearing, that fact that in order to receive repayment on your loan, you have to have a digital currency

address and you have to have a coin wallet.

To be sure, the series of steps that were described by Dr. Jassin are not obligations of the lenders at all. He and the other lenders have to have a digital wallet to receive repayment just as any lender of any dollar denominated loan would need to have a bank account. There has to be somewhere for the funds to go. But the MBA say nothing about how to go about getting it. Dr. Jasson himself agreed that the MBAs don't require him to use "any specific methodology to create a coin wallet or a digital currency address." And whatever his specific views about the best or the safest ways to receive repayment, he also testified that "there are very simple ways of creating a bitcoin wallet. You can do it on your phone in less than a minute." That was during the hearing on February 28th at Page 19, Lines 19 to 20.

I will also pause here for a moment to discuss a case that the CCAHG raised in their opening statements. That's In re Texaco, 73 B.R. 960. Mr. Azman said it was one of the more important cases cited in their brief. This was a 1987 case involving an indenture agreement where the court examined the potential application of an ipso facto clause and request to lift or modify the automatic stay.

As an initial matter, despite the way it was described at opening statements and with due respect to

Judge Schwartzberg, Texaco was not a tentpole in the body of executory contract law. The analysis cited by the CCAHG in their brief comes from a single paragraph of a nine-page decision that's largely focused on another issue. It's been cited 31 times in the last 37 years. Only 12 times in this district, and rarely for its analysis of what provisions might render an agreement executory.

More directly, the case doesn't support what the CCAHG claims. In a short passage in the opinion, Judge Schwartzberg identifies a slew of obligations of the debtor issuer and the indenture trustee, including reporting obligations, the obligation to commence litigation, and of course the obligation to pay the notes themselves.

Now, the CCAHG appears to be drawing some sort of analogy between the ongoing obligations of the indenture trustee and the CCAHG members' needs to take certain administrative steps like furnishing GGC with a wallet address in order to receive repayment on their loans.

But that kind of ministerial obligation on the part of the CCAHG member is very different from the kinds of obligations that an indenture trustee like the one in Texaco had for the simple reason that the trustee's role is effectively administrative in nature. The obligations that are listed in the indenture, subsequent to a note's issuance, are the core of the trustee's duties. And here

that's simply not the case with respect to the MBAs, which are focused on the lender's core role of lending assets, which here of course has already happened.

So in sum, there are no material unperformed obligations and therefore the contracts are not executory under that typical countryman) test.

I'll touch very briefly on the other tests that the CCAHG raises. The first is the functional approach. So sometimes courts in this circuit look and see whether the assumption or the rejection of the contract at issue would benefit the Debtor's estate. The answer here is very clear. Assumption and rejection would not benefit the Debtors. Of course assumption of the contracts without the kind of modification that is contemplated by the distribution principles would require the Debtors to cure all defaults, which as we've discussed this morning, the Debtors are simply not in a position to do. We are not in the position to provide lenders with a hundred percent of the loaned assets. And of course defending on the effective date, the rejection of the contracts could require a higher payment than the partial in-kind recovery we are contemplating under the distribution principles. And the best evidence of that is that I am standing up here responding to the CCAHG's arguments seemingly compelling us to reject their contracts.

The CCAHG also argues somewhat I'm passing that

the autorenewal clauses standing alone make the contracts executory. We are aware of no case that supports that conclusion, including the primary case cited by the CCAHG on that point. That's In re Windstream. And in fact, in that case the court held that even despite the existence of an autorenewal clause, there was just insufficient record evidence to determine whether the contracts were executory. So it can't be the case that the clause standing alone is sufficient given the analysis that the court in Windstream went on to do.

And finally, Your Honor, the CCAHG argues that Section 562 Safe Harbor provision should apply even if Your Honor finds that it doesn't apply based on the express terms of the statute. This is contrary to basic principles of statutory interpretation. There is no amount of policy rationale that can overcome the clear inapplicability of statute even if the rationale that the CCAHG offered were somehow relevant to the applicability of 562, it doesn't actually support their desired outcome.

So they argue that declining to apply 562 here would incentivize equity owners of crypto businesses to wait for a market downturn, quickly file bankruptcy petitions, and then reap the later upside when the market initially returned. Of course that's exactly the kind of gamesmanship that the distribution principles seek to avoid. And of

course more importantly, they offer no explanation for why the CCAHG members' claim should be treated differently than those of any other creditor in the Debtor's estates.

Unless Your Honor has any further questions, I will pass the podium to my partner, Ms. VanLare, to talk about the last section of the CCAHG objection.

THE COURT: All right. Thank you very much.

MR. KESSLER: Thank you.

MS. VANLARE: Good afternoon. Once again, Your Honor, Jane VanLare, Cleary Gottlieb Steen & Hamilton, on behalf of the Debtors. I'm going to address the objection with respect to the releases.

I'll note that as we stand here today, the CCAHG is the only party objecting to the Debtor's releases. The U.S. Trustee does have some objections to certain portions of the exculpation. But the release is really -- this is the sole objecting party.

So first I would just like to note again that the non-debtor releases in this case are purely consensual. We had an opt-in mechanism. This was widely publicized and holders of claims granting such releases had the option, purely consensual, had the option to opt in by affirmatively voting in favor of the plan and electing to opt in to granting the releases.

So really what's at issue here are the Debtor's

releases, not non-debtor releases, the Debtor's releases. The standard for the Debtor's releases can be found pursuant to Section 1123(b)(3)(A), which permit Debtor releases under a Chapter 11 plan as a settlement or adjustment of any claim or interest belonging to the Debtor or to the estate. And the standard for that is business judgement.

Your Honor, I posit that we have more than met our business judgement in approving -- in granting Debtor releases such that they should be approved.

The Debtors propose to release released parties. That's a defined term under the plan. They include the Debtors, the Committee and its members, but solely in their capacities as such, the Ad Hoc Group steerco and its members, again, solely in their capacity as such, and each related party.

Now, it's important to note the parties that will not be benefitting from the releases under the Debtor's plan. Former officers and directors of the Debtors who were not employed as of the petition date, DCG parties, Gemini parties, and officers, directors, or employees of the Debtors as to which the Special Committee determined to exclude them from the list.

The debtor releases importantly are further limited in scope as they carve out claims arising from fraud, gross negligence, and willful misconduct.

There's no disagreement among the parties relating the release and exculpation of the Committee and the Ad Hoc Group Steerco members. Therefore, the sole issue before the Court is the release and exculpation of the Genesis released personnel, i.e. the current and former directors, officers, and employees of the Debtors as of the petition date.

Your Honor, I would like to point you to the record. Again, we think that there's plenty in the record to support the Debtor's business judgement in granting these releases. First, Mr. Aronzon's declaration. Secondly, the notice of supplemental disclosure. This was the proffer that we filed at ECF 1403. Of course the reasons for the releases and the justifications are described in detail as part of the disclosure statement and the plan supplement, Exhibit F, at ECF 1117. And furthermore, they are supported by the testimony of Mr. Aronzon, which was extensive.

First in terms of just the overall context for the investigation that took place, which of course we describe in the disclosure statement. But Mr. Aronzon I think testified to it in a way that is worth noting. He said in describing the process and the investigation that took place as follows.

As part of our process, we asked our counsel and our financial advisors to conduct a very extensive interview. In fact, we put no boundaries on what they had

to do. We asked them to put their creditor hats on, put their litigation hats on, and to think about each and every type of claim or cause of action that they could conjure up and dig into our books and records and talk to the relevant parties to determine what claims might exist and against whom."

And he further goes on to explain the process. This is Page 27 through 28 of the February 27th hearing before Your Honor. The process was extensive. It was led by extremely capable former prosecutors who knew how to conduct investigations. And as you heard Mr. Aronzon say, there were no limits put on that process.

What came out of that, and in support of the release of the Genesis released personnel, the special committee provided a list of justifications for the releases. These include the significant contribution to the Debtor's restructuring efforts, the knowledge and insights regarding the Debtor's business, which has been and will be critical to the Debtor's litigation against DCG and Gemini and other parties, indemnification obligations of the Debtors pursuant to the Debtor's governing documents, the Special Committee's determination that the Genesis-released personnel engaged in no wrongdoing, the fat that litigating any potential claims would be costly and unlikely to result in any meaningful recovery for the Debtor's estate based on

the directors and officers insurance coverage and the fact that the releases are limited in the way that I've already articulated.

Furthermore, in the weeks leading up to the confirmation hearing, the Debtors negotiated a form of a cooperation agreement with various parties in interest, the form of which was filed at ECF 1391. And as reflected in the amended plan, the released Genesis personnel will be required to execute the cooperation agreement in order to receive the releases under the amended plan as further consideration and further justification for why the Debtors are absolutely appropriate in exercising their business judgement and granting the releases.

So again, I think the evidence in the record is replete. Mr. Aronzon was cross-examined on all of these issues. He was cross-examined in detail on the proffer. And that could be found again on the February 27th transcript hearing, Pate 24 through 67.

There's also an objection to the inclusion of related parties. I will note that the inclusion of related parties is extremely common in released parties in this district and others in Chapter 11 plans. They are routinely approved. The idea that the CCHG has tried to argue that we need to investigate every single related party, again, all of them are being released in their capacity as such. It's

unsupported by the law. It's impractical and it's completely unnecessary. Again, we go back to the special investigation that was -- that was conducted. It entailed extensive interviews, extensive document review, and was conducted by professionals who were imminently capable of conducting such investigations and looking at the facts and analyzing the claims. Subsequent to that, the special committee as advised by counsel and other advisors was -- had an extensive process of evaluating the findings of that investigation. And as you heard Mr. Aronzon testify, the special committee decided that it was appropriate to grant the debtor releases.

With that, Your Honor, I would ask that you approve -- that you overrule the objection of the McDermott Group to the Debtor's releases.

THE COURT: All right. Thank you very much. So let me hear from the committee.

MR. SHORE: For the record, Chris Shore from White & Case on behalf of the Committee.

Does Your Honor have my deck from this morning?

THE COURT: I do.

MR. SHORE: Okay. I'm going to try to be quick and practical about this.

If you go to Page 1 again. So to sum up where we've been, we've just spent the first six hours, five hours

with one party on one side, DCG, saying in this issue of how we go about determining the allowable amount of a crypto-denominated claim, the code is the code, the law is the law. All other positions are frivolous. Any settlement of that that doesn't impose 502 on everybody is outside the bounds of reasonableness, the plan fails. I guess that makes sense. Someone with an equity option is happy to play out the litigation. Always happy to play out the litigation. You can't do worse than they're doing now if the litigation plays out. They want you to flip the card on and issue a ruling with respect to exactly what is the right way to value a denominated claim.

What we are handling now is the other side of the debate. The code is the code, the law is the law, all of their parties' positions are frivolous, we want you to turn the card and rule in our favor. And as the people supporting the settlement and as the fiduciary for the creditors who want the settlement, I kind of have to argue both ways. And I can see both ways. I can see DCG's position, I can see the Ad Hoc Crypto Group's position. I don't think either one of them is right that the other party's positions are frivolous. These are real issues with real economic consequences for everybody involved depending on which way the card is turned here.

What I don't normally like is committee counsel

arguing against creditors who are taking the position that many of our people in our creditor body feel is their only (indiscernible) group though.

And I would like to go back to Page 24 of my deck. This is what I don't understand. And remember, I asked Your Honor that I thought that there needed to be two questions answered in the context of the Ad Hoc Group's position here. Because I understand the equity option. What I'm not understanding is this free option.

The plan is the plan is the plan, as I've said. The plan has only two options. For crypto-denominated claims, you get the distribution principles. For dollar-denominated claims, you get valued as of the petition date. And since there's no other amount beyond that in the form of restitution, that's what you get. There is no third option. I want to -- I am a crypto-denominated creditor. I want my contract rejected because it's executory or assumed with everything cured. And therefore, I get something other than petition date pricing and I recover ahead of the release. That is not an option in the plan.

So the first question is do they really want the plan to fail. Would they rather -- rather than take the distribution principles, would they rather choose the abyss? Let's turn over the card. We'll see what the judge says with respect to 502 and 556 and executory contracts and

restitution and everything else. And we'll take the possibility that we amongst the largest of the bitcoin-denominated claims will get crushed.

I guess they're here arguing their objections still. But again, I don't think their plan objection really reads as I choose the abyss over what we have on the table today.

But more importantly on this concept of free options, do they really want their contract to end? Because we could find a way to do that. If what we were doing is isolating these eight creditors, the issue is if they -- crypto-denominated claims get valued as this date. Do they want -- did they want a "rejection"? That is do they want to be treated as if it's an executory contract? Because if it's an executory contract, it doesn't really end where they say it ends with -- and then you rule that I get the date as of the rejection.

And I say that for two reasons. One, it's not clear that 562 applies. That is if we go down that road and Your Honor were to rule that 562 does not apply, they're going to be a dollar-denominated creditor, which under this plan gets paid out in petition date pricing. It's a several hundred million dollar swing in their recovery. So it's a real choice that has to be made. But it is a choice that has to be made. Imagine they were a creditor who said I

want to compel the Debtor to reject my contract. We see those every once in a while. File a motion. Debtor is not doing what it's supposed to do. You need to compel them to reject the contract. I just want to be clear, my motion is only being brought if you agree with me on the calculation of damages. If you agree with me that it is effective date pricing, I want my contract rejected. But if you say it's petition date pricing, I don't want my contract rejected. They're just asking you for an advisory opinion. Spend time and effort, have your staff work all this up, and then I'll decide when you turn over the card. That's not the way it works. You are perfectly within -- the Court is perfectly within its rights to say I'm not addressing that issue until you answer me the question; are you willing to end your contractual relationship with the Debtors if I say this contract is not executory? Or if I say for some other reason 562 does not apply. Or how about this? Remember I showed you the date of bitcoin at the time the plan was filed? It's $26,000. If they go ahead with this and they say, no, I want to be treated as an executory contract holder, they want to file a rejection damages claim, I can certainly see that people would take the position that the damage calculation is as of the date the motion was filed. Right? Their position is that the plan constituted a motion to reject the contract as of the effective date of the plan.

Perfectly within Your Honor's rights even after the Supreme Court's pronouncement to say that we're going to treat it as the rejection motion having been filed as of the date the disclosure statement was filed. Are they willing to accept the consequences that Your Honor would say you're right, it's an executory contract. You're right, 562 applies. You're wrong that it's the effective date. It's actually the date the motion was filed. That is the date the plan was filed. Because if they're not wiling to accept those consequences to what sounds like the easy button, oh, you just ruled that it's an executory contract and we're all done and everything is going to be fine. If they're not willing to accept those consequences, I don't think you should be taking their plan objection seriously. It just seems like then it's a free option. Why don't you create some new interesting law for me to use in other cases and I will then decide whether or not I want the distribution principles or I want to be treated as something unlike any other creditor in the case, an island of -- I think it's seven creditors now who want a plan treatment that's not in this plan.

THE COURT: All right. Anyone else who wishes to be heard on this issue before I hear from CCAHG?

All right, let me hear from CCAHG.

MR. EVANS: Your Honor, Joseph Evans from

McDermott Will & Emery on behalf of the Crypto Creditors Ad Hoc Group. Good afternoon.

THE COURT: Afternoon.

MR. EVANS: On behalf of the Crypto Group, we have two primary objections to the plan. First, that crypto claims connected with master borrower agreements, MBAs, are wrongly valued as of the petition date because they are both covered and executory contracts under 11 U.S.C. 562.

Second, that the Debtors failed to meet their burden of proving that an unspecified number of releases of insiders are fair, reasonable, and in the best interest of the estate.

There has been a lot of discussion today about who our group actually is. The other law firms here are right; there are seven people left. They consist of individual investors who trusted Genesis with their bitcoin and ETH. We have no financial institutions, no conglomerates. These are individual crypto investors who have pushed forward in the face of threats of dollarization, like we just heard, and a pack of big law firms seemingly united against them.

At the outset of this case, the UCC said that the plan is a plan, and it's the only plan.

THE COURT: Well, I think their point is to get at the free option, right?

MR. EVANS: Yeah.

THE COURT: So I get -- this sets the floor and then I get -- if I win, I get the upside. If I lose, I give up noting. And so that seems to be as I understand the -- I don't know how your clients voted or not on the plan.

MR. EVANS: Did not vote on the plan.

THE COURT: They didn't vote. Okay. So I think it just is what it is.

So as to -- you said executory contracts and releases. What about administrative claims?

MR. EVANS: Administrative claims. We hear the Debtor's argument. We rely on our briefs for the administrative claims.

THE COURT: All right. But you're still making your argument, but you're not going to address it here today.

MR. EVANS: I'm not going to spend the time today.

THE COURT: All right.

MR. EVANS: So with respect to the plan being the only plan, there is a problem with this plan. It violates 11 U.S.C. 572 and the evidence doesn't support the releases.

While the opening argument suggested the plan was the only plan, that it never changed, there have been a lot of changes. There was an amended plan filed during the confirmation hearing, the NY AG settlement, the Gemini settlement, the SEC settlement, the Texas settlements.

Change came quite a bit.

THE COURT: Well, I have the plan. You have your objection. Let's stick with that given the hour.

MR. EVANS: Okay. So the crypto creditors are to focus on something else, something that's not going to change. It's just like a blockchain, it's immutable. And it's the record, the record, and it's the only record. Admissible evidence only. We urge the Court to focus on what's in evidence. And perhaps most importantly, what's not.

What is in the record is that the crypto creditors provided admissible evidence with a live witness showing that the MBAs are executory. They established on cross-examination that the special committee member, Mr. Aronzon, did not have the requisite knowledge of consensual releases. Debtors did nothing to combat that admissible evidence. No rebuttal evidence for Dr. Jassin, no contemporaneous records, no redirect of Mr. Aronzon. In the face of one-sided evidence, Debtors relied solely on lawyers' arguments. But lawyers' arguments are not evidence.

THE COURT: Well, are you talking about all your arguments or just particular arguments? So let's go through them one at a time.

MR. EVANS: Sure.

THE COURT: Because Mr. Aronzon did testify he was

cross-examined on the release issue. And so I have that evidence and it is what it is. So which one do you want to address first?

MR. EVANS: 562.

THE COURT: All right.

MR. EVANS: Our position, as we stated, is the plan violates 11 USC 562. In order to get there, they need to both be a covered contract and they need to be executory. And the parties have already stipulated that they cover contracts for the purposes of this dispute, so I won't burden the Court with time on this. But for good measure, we also submitted declarations of Dr. Jassin and Mr. Fernandez with the factual predicate for finding that these are both securities contracts or forthwith contracts. And the New York AG amended complaint accused Genesis of issuing unregistered securities at Count 3 and Count 10 and so they appear to be in line with the determination that the MBAs constitute securities contracts.

I think there's an important question to answer before I get into executory, and it's a question that Your Honor asked us at the first hearing. What do we want? What are we asking for?

We are asking for a decision by the Court that the plan in its current form cannot be confirmed because it violates --

THE COURT: Well, I think you are asking for your agreements to be deemed executory and then covered by the safe harbors, right? That's your argument.

MR. EVANS: The crypto creditors' MBAs, yes, that's correct.

THE COURT: Yeah, right.

MR. EVANS: That's correct. And so there's going to be a discussion of an advisory opinion or -- what we are asking for is a ruling on whether the plan complies with 11 U.S.C. 562. That's it.

THE COURT: Yes, your -- because other folks who would make this argument have not made this argument. So it's your clients.

MR. EVANS: Well, yes, Your Honor. But as the Debtors just said, the crypto MBAs are all the same. And so the treatment of the master borrower agreements --

THE COURT: But I have people here representing those other people. So I don't think you get to say what arguments they are making or they're not making. People make lots of decisions in life, and I wait for those people's lawyers to stand up and tell me what they would like to do.

So again, we are talking about your clients, your objection, 562. Go. Let's do that. So why are these executory contracts?

MR. EVANS: The Debtor's whole argument relies on 562 and these arguments not being executory. There's not been any admissible evidence on their position that they are not executory.

THE COURT: Well, I have the agreements, right?

MR. EVANS: You have the agreements, that's right.

THE COURT: So that's admissible evidence.

MR. EVANS: Similarly odd is that the Debtor's schedules still identify all of the MBAs as executory contracts.

THE COURT: Well, are you arguing that they have waived the issue? I don't remember seeing that argument. Again, I have the agreements. My understanding is I should interpret the agreements to figure out whether they are executory. So let's do that.

MR. EVANS: Let's move there.

THE COURT: Yes, please.

MR. EVANS: We have identified automatic renewal provisions, the Windstream and the NuPage case. We've also identified 19 obligations that are in the MBAs for the parties which were addressed by the Debtors. That's at Paragraph 54 of our brief. But today I want to focus on two key obligations that crypto creditors owe to the Debtors under the MBAs today. As the Debtors conceded today in oral argument, no party contested the Debtors have material

unperformed obligations. The real question is do we have them.

First, the digital wallet. Section 2(c)(1) says that if lenders, that would be us, have not provided the borrower a digital currency address for receiving a repayment of a loan by close of business on the day prior to the maturity date, the recall delivery date or the redelivery day, then such loan would become open loan on said maturity day.

And as the Court may recall, we have the testimony of Dr. Jassin describing all the steps that needed to be taken in order to provide what is seemingly pretty simple, digital currency address.

A digital wallet is where crypto is stored. Each digital wallet have multiple digital addresses or can have multiple digital addresses, which is a series of combinations of letters and numbers which tells people where to send crypto.

The testimony at trial in this regard is only from Dr. Jassin. This is on confirmation day two. He said that Genesis was much different than a crypto exchange like Coinbase where a crypto investor could just click a button that says withdraw. Genesis had no such function. Instead, first he had to, quote, "create a private key, which is basically a large random number that has 256 bits of

entropy," unquote. Second. The number was converted into the form of a bitcoin private key. And steps one and two are commonly referred to as a way to create a digital wallet.

Third, the bitcoin private key would then get converted into an easy way of writing down the private key and English words. So that's a 24-word seed phrase.

Fourth, you write the seed phrase on a piece of paper or, quote, "since these amounts are significant, he would also engrave these words with the steel plates." This is commonly referred to as a crypto steel. And it's a little metal device that holds your seed phrase.

Fifth, he would have to find a way to secure the steel plates at different locations in case anything happened.

Sixth, once he had that private key secured, he would get the private key converted into a public key.

Seventh, from the public key it would get converted into a bitcoin receipt address. And that's what he provided Genesis for them to be able to finally give him his bitcoin back.

The Debtors cross-examined Dr. Jassin and the Debtor's argument today is suggesting, well, you didn't really have to do all that. He would only have to do -- maybe that's what he wanted to do, but he didn't really do

all that.

In response, Dr. Jassin testified, "I described the simplest way to create a secure offline receiving address." He also testified --

THE COURT: Is there something in the contract that mandates what your client testified to?

MR. EVANS: Yes.

THE COURT: All right. And what is that and what does it say?

MR. EVANS: The contract says the lender must provide a borrower a digital currency address for receiving a repayment of a loan by close of business on the day prior to the earlier of the maturity date or the recall delivery date.

THE COURT: But the other steps that your client went through in terms of how he would do it. I understand from his testimony why he was doing what he was doing. But I think I heard the argument that that wasn't a contractual requirement. There was a contractual requirement that you just read, but that's a lot less specific than the steps that your client put forth.

MR. EVANS: So that's fair, Your Honor, that the steps that he put forward are not explicitly laid out in the contract. And what Dr. Jassin testified to was these contracts are only available to crypto holders that would

pledge a hundred bitcoin or more. And when you tell a crypto creditor -- a crypto investor that they need to provide a hundred bitcoin or more, these are the minimum steps that they would do to provide a digital currency address.

And in fact, Dr. Jassin testified that "there isn't a single one that wouldn't do the things the way that I described."

THE COURT: Well, is he -- he wasn't offered as an expert.

MR. EVANS: Correct.

THE COURT: And so he gave me his opinion as owner, and I'm happy to take it. But he -- again, I didn't have any expert testimony in this case of that sort. So I will take it for what his opinion is. That's fair.

MR. EVANS: That's fair enough, Your Honor. That was pretty much my next point.

After Dr. Jassin testified on day two, there was another confirmation hearing date on day three. The Debtors could have brought forward one of the dozens of Genesis employees that are currently being paid by Genesis to provide testimony that contradicted Dr. Jassin that said what he did wasn't necessary, that said actually all of our investors do something totally different and it's much easier.

THE COURT: That's true. I mean, I think I understand their position, rightly or wrongly, to be that they made the legal argument about what the contract requires. I think that's where the parting of the ways was.

MR. EVANS: Right. And so where we land -- and I think you are exactly right, Your Honor, they are making a legal argument based on the terms of the contract. We're arguing on the contract plus the witness.

But what is the Court left with? Now there's uncontroverted testimony from Dr. Jasson describing the technical obligations owed by crypto creditors to Genesis.

THE COURT: Well, I am guessing that what I'm going to hear from other folks is that the contract is the contract. Right? And that some people's opinions about the contract is not the same as the contract. And that's sort of blackletter law unless there's an ambiguity in a contract. So that's as I understand it, regardless of what jurisdiction you're in -- and I imagine this is New York law, but I think all jurisdictions I've had the pleasure of visiting in this job all say the same thing about ambiguity and contracts.

MR. EVANS: The contract requires the crypto creditor or the crypto investor to provide a digital currency address.

THE COURT: Yeah, I got it.

MR. EVANS: And what the testimony describes is what needs to be done in order to do that.

THE COURT: It describes his opinion about what needs to be done. And again, I think that's where there's a difference of opinion as to what's relevant for what I'm looking at. I'm just trying to be candid instead of teasing through the issues. I understood the Debtor's position to be the contract says what it says, Mr. Jassin said what he said, and that's where we are.

MR. EVANS: Fair enough.

THE COURT: So let me ask you one question, which is there was a lot of discussion about the -- and citations from a lot of cases about automatic renewal options not constituting executory contracts. Do you have any case you wanted to point out to the contrary?

MR. EVANS: Both In re Windstream and NuPage, both cited in our brief, descried contracts that had automatic renewal provisions. And they said that can be an executory contract. We are not saying there's caselaw that we have that says they must be an executory contract. And that's one reason why we are not relying solely on that provision for our argument here.

THE COURT: All right. Anything else on executory contracts?

MR. EVANS: Yes. There is one provision that I

would like to point to. I know the Debtors are focused on the contract, and we are too. And this was stated in Paragraph 55 of our brief. And it states, "If either party fails to perform in the event of a hard fork or air drop described in the contract, the non-defaulting party may declare an event of a default and terminate." Section 5 of the MBAs confer an obligation to the crypto creditors. This section concerns hard fork. Hard fork is when a blockchain splits, which will generally result in a new form of that cryptocurrency. And the classic form of that cryptocurrency as defined in the MBA, a hard fork means a permanent divergence in the blockchain or an air drop or any other event which results in the creation of a new token. An airdrop under the contract means a distribution of a new token or tokens resulting from the ownership of a preexisting token. And so what this section describes is that the parties need to do in the event of a hard fork or an air drop.

And just to be clear, I know there was some discussion of we're in control of everything, there is not going to be this contingent obligation. None of the parties here have any control as to whether there is a hard fork or an airdrop. This is not purely hypothetical. There have been a number of hard forks and air drops under the Ethereum blockchain. There have been a couple in the bitcoin

blockchain. These things happen.

Section 5(a). In the event of a public announcement of a future hard fork or an air drop in the blockchain for any loaned assets, lender, the crypto creditor shall provide email notification to borrower. Borrower and lender may agree, regardless of loan type, either to terminate a loan without any penalties or for lender to manage the hard fork on behalf of borrower. This means that if there is a hard fork, the parties may agree that lender, us crypto creditors, have to manage a hard fork to the Debtors. And if there is a hard fork resulting in new tokens -- that's this air drop concept I was talking about -- Genesis is -- The Debtors, sorry, are entitled to them under other certain circumstances and the crypto creditors are entitled to them in other circumstances. And both parties have to evaluate who is entitled to these new tokens.

Section 5(c). There are restrictions on market capitalization, 24-hour trading volume. Where this shakes out is if certain criteria is hit, Genesis needs to transfer the new tokens to the crypto creditors. If those criteria are not hit, the crypto creditors have to confer ownership of those new tokens back to the Debtors. Those obligations concerning air drops and hard forks remain to this day.

I want to talk about a case that was discussed by

the Debtors which is In re Hawker Beechcraft. And In re Hawker Beechcraft described contingent obligations. And they're right. We cited this for the purpose of stating that contingent obligations are sufficient to render a contract executory. And in that instance, there were a number of things that if it happened, the parties had obligations to one another. And the Debtors distinguished this case saying, well, that was only because in those contracts, those provisions were identified as material. That's the same thing here. Section 7(d) of the MBAs say not complying with air drops, the new tokens, or the hard fork provisions is a material breach.

THE COURT: So back up for a second. You're saying if because of an airdrop or hard fork there is new currency created, it's a breach?

MR. EVANS: No.

THE COURT: I thought I heard you use the word breach, but I suggest I misheard.

MR. EVANS: Sorry, sorry. If either party does not comply with the air drop, hard fork, new token provisions in the MBA, they have described that noncompliance as a material breach.

THE COURT: And where is that?

MR. EVANS: That is Section 7(d).

THE COURT: And what does it say?

MR. EVANS: Section 7 is a default section. It is further understood that any of the following events shall constitute an event of default hereunder against the defaulting party and shall be herein referred to as an event of default or events of default. Section D describes a "material default by either party in the performance of any of the other agreements, conditions, covenants, provisions, or stipulations contained in this agreement including, without limitation, a failure by either party to abide by its obligations in Section 4 or 5 of the agreement. And such parties' failure to cure said material default within 10 business days. Section 5 is the section labeled -- let's get the words exactly right. Hard fork.

THE COURT: All right.

MR. EVANS: So we have the other executory obligations in our brief. Those are the two I wanted to focus on today. We do believe that 562 would be the just result here. The debtor is one of the most crypto companies in the world, attracting some of the highest-value individual crypto investors, many of which are crypto creditors now. Genesis' balance sheet and a massive asset accumulation was due to crypto investors providing their bitcoin and ETH to it.

THE COURT: Well, it either or isn't an executory contract. There's lots of people arguing about where the

money should go as a matter of policy. So I will decide the legal question and let the chips fall where they may.

MR. EVANS: Fair enough.

THE COURT: So what would you like to argue as to releases?

MR. EVANS: And, Your Honor, if I could just have a moment to address the UCC's argument about the horribles that will fall us if we win or lose or assert these claims. If you want me to do releases first, I'll go there.

THE COURT: No, no. Go ahead, please. Is there somebody -- is there somebody on the -- there is somebody who's got an open mic. Open mic moments are always bad, particularly in the law. So please mute yourself. Thank you. It was soft enough I thought maybe I'm hearing things.

MR. EVANS: Okay.

THE COURT: Okay. Your response to the UCC?

MR. EVANS: Yes. So the UCC is seemingly taking the position that since the crypto creditors' group has asserted what they believe their rights are under Chapter 11, that they are, A, asking for fiat claims, which we're not. Or B, asking for a resolution where if we lose our objection, then the whole plan gets thrown out and we get treated somehow disparately from everybody else. Neither of those is what we're asking for and neither of them are supported.

There are classes of creditors identified in the plan. Bitcoin creditors are class four. ETH creditors are class five. That's where all of our group sits. There's nothing in the plan that says you are a bitcoin creditor unless you object. And therefore, you are not. You are an ETH creditor unless you speak up about your rights under Chapter 11, and then you are not. There is no provision for that.

And so all we're doing is objecting to the plan because we believe it does not comply with 11 U.S.C. 562. And we shouldn't be penalized for that. If we lose, then we lose. And we get the plan just like everybody else.

THE COURT: Yeah, no. But I think that's his point. If you lose, you win. Right? You lose, and if the plan is confirmed, you still get the benefit of the distribution principles. Again, it doesn't matter. I have to decide what the executory contracts question, and I'll decide that.

I think his thought is, as sometimes happens, someone says -- people will point out occasionally in terms of the equity of arguments whether somebody is essentially playing with house money or not. And so he's made that point. And it is what it is. But I still have the executory contract issue to resolve regardless of that phenomenon.

MR. EVANS: And it leads us right into the releases. Because just like parties will object to releases and if they lose on their objection to releases, they don't get given negative status or devalued or...

THE COURT: Well, there is a point that to the extent there's an argument that you make that would lead to a hard stop where otherwise there wouldn't be a hard stop in the case, it is what it is. So I haven't again figured out what everything looks like in the context of the many objections and arguments made today. I will. But I think that is a real thing. And so I mentioned that only because there has been a discussion about delay and the significance of delay. So that's a real consideration, a real world consideration. It doesn't solve lots of legal issues for me, but it's a legitimate, real world consideration for now.

So on to releases.

MR. EVANS: The plan seeks to release 176 Genesis personnel and uncapped number of what they have defined as related parties. This includes six C-suite executives who were employed prior to the petition date. It also includes the interim CEO, who has been an executive of the company since May of 2020.

The Debtors have refused to identify who the related parties are. And they said it's not common, related parties often don't get disclosed. We don't know exactly

who they are, but just we're going to be okay, stick with the related parties discussion. There was a stick with the related parties definition.

There was a paragraph in their confirmation brief at 75 that said to the extent there is any concern regarding the identities of related parties, that matter can be addressed if and when a person or entity asserts they are a related party in a litigated context. Well, that's not a good backstop.

So because we don't want to decide who a related party is and who they are not, we --

THE COURT: Well, there's a definition, right? When you say not identified, you mean not identified by name, individual.

MR. EVANS: Correct. Correct. And the definition includes, for example, members, managers, employees, agents, consultants, investment bankers, representatives. There are terms in the related party definition that are exceedingly broad. And in our view, waiting around to determine for the estate of the litigation trust to determine, hey, I want to sue this third party, let me wait and see if they put forward as an affirmative defense that I've actually released them isn't good enough.

THE COURT: Well, let me ask you about that. You mentioned litigation. And I think one of the primary points

and things I think that was added in response to an objection that was made was to include cooperation agreements of people cooperating on litigation because there is in fact a significant litigation or more that are out there. And so what I understand the Debtor's position to be is that that is value, especially when considering the results of the investigation, and the instances where folks who might otherwise be covered were kicked out based on sort of facts that the Debtors were aware of or other parties made them aware of, and so that's a valuable thing. Because, again, this is a debtor release. This isn't a third party release. It's a debtor release. So the Debtors have made that business judgement about releases and the benefits and the things you're giving up in the context of carveouts for fraud, gross negligence, and willful misconduct. So what's your basis to say that that's an irrational decision?

MR. EVANS: Fair question. Just one point of clarification. The related parties' concern the release in the plans, and then there's also Genesis-released personnel, which is the 176 --

THE COURT: Well, let's start with the Genesis-released personnel.

MR. EVANS: Let's focus on the releases.

THE COURT: Because as I understand it, your

objection hasn't changed.

MR. EVANS: It has not.

THE COURT: Yeah. So let's start with the 167.

MR. EVANS: Okay.

THE COURT: Or 176.

MR. EVANS: Let me focus on your first question, which was the Debtor said they are going to cooperate with the estate and cooperate in litigation, isn't that important to you and shouldn't they get releases for that basis. Maybe.

Now, what we've seen is a cooperation agreement that was filed midway through the confirmation hearing that said that the employees that are being released will cooperate with litigation. And if they don't, they're fired. Right? That's basically what it says. Or they won't be on that list.

What we don't have and what is not on the record is what their preexisting obligations are. AS an employe of the company --

THE COURT: But nobody -- I don't think anybody raised this earlier during the trial when we can actually answer these questions. But it's fine. So you don't know what their existing obligations are to cooperate.

MR. EVANS: I don't know what their existing obligations are to cooperate. And three of the things that

they said they were going to cooperate with were a bunch of -- were regulatory inquiries, many of which have all been resolved.

THE COURT: But don't you run the risk that somebody is going to say that you're supplying your business judgement for the Debtors in the context of this? I mean...

MR. EVANS: Let me address that point head-on. Because that's an important part of our argument.

Our position is that the Special Committee was the body that was tasked with providing prior written consent prior to the releases. The evidence at trial, the evidence in the record in our view supports the notion that there was no business judgment made. Because Mr. Aronzon when he made the decision did not have sufficient facts to make a business judgement. And so I'm not supplanting my business judgement for anyone else. The body that was tasked with providing written consent --

THE COURT: On that I would disagree with you. You may criticize his business judgement, but you are -- I mean, he literally has statements that he says in my business judgement we think these releases are appropriate. So you are. I mean, let's just be clear what you're doing. You can make arguments that that's appropriate here, but that is in fact you are taking on his business judgement. I mean, there's really not a way to sugarcoat that.

MR. EVANS: Let me move to why I think the business judgement wasn't supported by the facts in the record.

We cross-examined Mr. Aronzon extensively during the course of the examination hearing. There was a proffer filed 20 minutes before the cross-examination. And I think what's really important to note here is all the things he didn't know. All the things that he didn't know when he signed the list of releases on December 29th, 2023 when he stated that he was driving in his car when he agreed to the releases. He did not --

THE COURT: Let me ask you. So if he didn't know something and then later, I think as is the case with supplementing the record at my request or my suggestion to provide additional information. And then those things all turn out the answers to those seven questions. I think all turned out to be good answers for purposes of your client, meaning resolving issues sort of as you went through. Does that mean that, again, as a collective business entity and the Debtor, Mr. Aronzon, is the declarant and he is the party who is cross-examined. But if I ultimately find that there is a reasonable basis for it based on the totality of the record, is it your view that if Mr. Aronzon signed something at a certain point and it's frozen in that time as to what he knew?

MR. EVANS: His consent is as good as it was on the day he signed it.

THE COURT: But let me explain to you how court works here. These issues come up all the time. And since we try to get at the truth of the matter with as much information as possible, it is quite often the case that people ask questions about these things, whether it's releases or something else and are provided with information. And in fact that's certainly the exchange that's gone on here with your client and with the U.S. Trustee's Office and with others. And it is highly problematic as a matter of reaching a proper and just result to sort of play a game of gotcha and freeze things artificially at a moment in time and say, well, when I deposed you, you said X. So I don't even know how we would mechanically do that. Because it means, well, we can't make that person available for a deposition until we finish the entire process. So I guess that back row of people will be deposed while we have a hearing going on.

But no, listen, it's an important point. Because I think your world view on that stands in the way of the process that is pretty common and, frankly, seems to be an appropriate vehicle for getting at the truth. So...

MR. EVANS: How about I focus on what he knew at the time of the confirmation hearing?

THE COURT: Well, but is that your position? I mean, I want to be clear about exactly what the scope of your objection is.

MR. EVANS: The scope of my objection is when he gave the written consent, which is the only written consent that he ever gave, on December 29th, 2023.

THE COURT: All right.

MR. EVANS: That he didn't have the sufficient factual basis. My position also is that he didn't have a sufficient factual basis at the confirmation hearing. And he still doesn't. At least -- I haven't talked to him recently, but at the confirmation hearing.

For example, he testified at the confirmation hearing he did not know prior to the motion in limine we filed on February 21 how many people were being released.

THE COURT: Okay. But again, you're going back in time. So if we later got -- so it is irrelevant in your mind that numbers were later provided.

MR. EVANS: If he provided a written consent again, it would be relevant. But he provided one written consent on December 29th, 2023.

THE COURT: I will tell you that argument I am not going to find persuasive whatever else I do, because I think it is a real enemy to actually reaching just and appropriate results in large cases that are quick-moving and where

people need to exchange information. I think freezing things as of a particular date -- and if you remember at the trial I said you've learned these things for purposes of the proffer. Do you need additional time, would you want to question the witness now. And I did that because surprise is a legitimate concern. I get it. You decided no, I will ask the witness the questions now. So I am certainly happy to prevent undue surprise and to compromise somebody's ability to ask intelligent questions. But I will tell you right now, I reject the notion that we're going to play this game of gotcha down the road if additional facts come to light and that I'm supposed to throw them all out. That's just -- that would wreak a lot of havoc in a lot of cases.

MR. EVANS: Well, let me just focus on then less about the timing and more about knowledge at confirmation.

Mr. Aronzon testified that he did not know whether any of the released parties signed loan documents with 3AC. With respect to financial statements, he said that he thought others reviewed financial statements from 3AC.

THE COURT: But am I right in remembering the testimony that there were a number of questions and back and forth where he, for a number of these questions, said nobody who was involved in the decision on things like Three Arrows Capital got a release? I can't tell you whether someone in their role as a functionary was required to sign but was not

a decision-making person whether one of those people is released. Am I remembering that correctly?

MR. EVANS: Your recollection of that piece is correct. There was words to that effect I think with respect to 3AC.

THE COURT: But then what's your -- if that's the testimony and that's the evidence, what's your point? That somebody who is being given direction by somebody else who makes the decision and has no independent decision-making authority but whose name ends up on a document, that that precludes them from getting a release? Doesn't that elevate form over substance?

MR. EVANS: The questions were designed to test whether he had sufficient knowledge of the 3AC loans to issue releases one way or the other. And so whether he knew who signed the documents --

THE COURT: But I think he answered nobody who was involved in the decision-making process as to the Three Arrows Capital loans got a release. Your question was a different one. Your question was is there somebody who may have signed off on a document who did not have decision-making authority. And he said I can't tell you that because we didn't think that was the relevant question. And my question to you is does your focus there miss the forest for the trees, whatever metaphor you want to make, elevate form

over substance.

MR. EVANS: Let me try to get to the forest on the 3AC issue, which is 3AC had no audited financial statements. That was a big problem for this bankruptcy estate, for a number of the other crypto bankruptcy estates. And when we asked Mr. Aronzon whether 3AC had audited financial statements, he says I have no idea. And so if he is the one that's appointed to make a decision as to whether releases should be given to insiders, he should at least know that. And that was our point of the 3AC cross-examination.

THE COURT: All right.

MR. EVANS: We had similar lines of testimony Your Honor will recall about the BCG notes, whether any of them signed them, whether anyone was involved and to the extent of the -- extending the maturity date of DCG loans, whether released parties were involved in decisions during the tax sharing agreement, and whether any insiders were involved with diligence in relation to the assumption by DCG of the GAP loans. Similar testimony as to 3AC.

THE COURT: Right. But I think similar meaning that the question ultimately devolved into whether somebody who had decision-making authority got a release. And the answers were no, but he couldn't swear that somebody who didn't have their name somewhere mentioned in that corporate structure who works on that stuff. Right?

MR. EVANS: We were given conclusions both in the proffer and by Mr. Aronzon. We have one fact witness. That was the only witness offered to us. And --

THE COURT: No, no. I'm talking about what the testimony was.

MR. EVANS: Yes.

THE COURT: That the testimony was that nobody who was a decisionmaker on those issues was given a release.

MR. EVANS: That was the conclusion, yes. And then the cross-examination was designed to test whether he knew whether that was true.

THE COURT: Fair enough. Fair enough.

MR. EVANS: As another example, there was a line in the proffer that said that the released parties were subject to indemnification by the Debtors and so the claims would be worthless anyway. And then when asked whether he knew if all of these released persons were subject to indemnification, he said he did not know. There was also a line in the proffer that said that pursuing the insiders was not financially worthwhile. We asked whether he reviewed or anyone reviewed any personal financial statements from those insiders, and he said no.

And the Debtors had an opportunity to supplement the evidence in the record if they wanted. They chose not to. They chose not to do so. They could have redirected

Mr. Aronzon. They could have asked him describe what you knew when you authorized your releases. Why didn't you think it was necessary to look at the loan documents from 3AC or find out whether they were audited financial statements? What facts did you rely on when coming to this conclusion? And they didn't do that. They didn't do that.

So the problem with the record here is all we have is a conclusory proffer submitted 20 minutes before his examination --

THE COURT: Well, we had the declaration. Right?

MR. EVANS: We had the declaration.

THE COURT: Right. And so there were -- I think the proffer was something that when I asked you what is it that you would like to know, you identified seven topics. They were the topics that were identified in your pleading.

MR. EVANS: Yes.

THE COURT: And we went through them. And the proffer was the result of trying to answer those questions to provide additional information.

MR. EVANS: Fair enough. I think it was either seven or nine, but whatever ones we identified, those are the ones that they addressed in the proffer. We have different views as to whether those are sufficient enough. In our view they were conclusory and --

THE COURT: No, that's fair enough. I'm just

trying to be careful with the record when you say the only evidence -- things like the only evidence we have is the proffer. So I'm just trying to straighten that out, because that's not accurate.

MR. EVANS: Fair enough. Fair enough.

THE COURT: What else would you like to tell me? I will say I have an unhealthy-detailed memory about witness testimony.

MR. EVANS: Very good.

THE COURT: My apologies.

MR. EVANS: No, very impressive. When we started this argument, we urged the Court to focus on the record and the record, because it's the only record. Admissible evidence only. With respect to the crypto group's objections, what is in evidence and what is not. Here's what we believe is in the record.

On 562, we have the contracts. We have a stipulation where the Debtors admit or agreed that the MBAs are covered contracts for the purpose of this dispute. We have Dr. Jassin's testimony explaining why at least he believed the MBAs are executory. And we have the contracts themselves, including obligations concerning the digital wallets and the hard forks and the air drop.

THE COURT: I have the 562 argument. I've got it.

MR. EVANS: And as to the releases, we just went

through what we believe the record shows with Mr. Aronzon. What's not in the record is any witness from Genesis rebutting Dr. Jassin, anyone else from Genesis saying that what he said about the digital wallets is crazy or unique or specific to him, or redirect Mr. Aronzon to restate what he knew or didn't know at the time and what he knew or didn't know now.

Creative arguments from the lawyers, no matter how smart, is not evidence. Lawyers trying to convince the Court about how the contract actually worked is not evidence. Empty threats about the parade of horribles that could, may, or maybe will occur if the crypto group is successful or unsuccessful is not evidence.

THE COURT: I got it. We don't need to repeat everything. I got it. I know what's evidence and what isn't.

MR. EVANS: Fair enough. We believe the admissible evidence at trial supports two conclusions. One, that the plan cannot be confirmed because it violates 11 U.S.C. 562. And two, that the Debtors failed to meet their burden to support releases for a still unknown number of insiders.

THE COURT: Am I right just the way you said that at the end, you would like the plan not to be confirmed?

MR. EVANS: The plan in its current iteration to

not be confirmed because of 11 U.S.C. 562 and the releases.

THE COURT: All right. So go back to negotiate.

MR. EVANS: What we want is a ruling that we're right on 11 U.S.S. 562, the plan can't be confirmed in its current iteration. And then what would happen practically is --

THE COURT: No, that's fine. I just -- different people will say here's my argument, here's the problem, Judge, and here's what I want. And those things can vary. Right? There's different variations on that. I want you to fix them as to my client versus I want you to blow the plan up. There's different ways to look at it. That's why I want to be very clear what it is you're asking for.

MR. EVANS: I'm not asking Your Honor to redline the plan or the distribution principles. I know you can't do that. What we're asking is to apply 11 U.S.C. 562. In our view it applies here and the plan can't be confirmed in its current iteration on that basis.

THE COURT: Thank you.

MR. KESSLER: Good afternoon, Your Honor. For the record, Tom Kessler from Cleary Gottlieb for the debtors. Very briefly two points.

First on the discussion of the hard fork provision. As we lay out in our brief and as we discussed, contingent obligations do not necessarily render -- a

contingent obligation isn't necessarily sufficient on its own to render a contract executory, nor is one performance obligation. We lay all this out in our brief I think amply, and I'll leave that where it is.

On the second piece that was focused on -- I think I may be the only person who hasn't had a chance to say it, so I will say it. The contract is the contract is the only contract, the contract. And as Your Honor noted, the contract speaks for itself.

I think what's pretty important here if I can direct the Court to an example of these MBAs. This is JX-017. It's Dr. Jassin's. There was some discussion of Section 2(c)(1) and the requirement to provide a digital currency address and to have a wallet at the time that the loan needs to be repaid.

I think it's important to know that in that provision, the contract goes on to say that if a lender has not provided to the borrower that digital currency address, then the loan becomes an open loan and the maturity date or the delivery date simply ceases to exist and the loan will be repaid at such time as the digital currency address becomes available. So it isn't the kind of all-or-nothing composition that was suggested in the presentation this afternoon.

And of course I will rely on Your Honor's sharp

memory of the presentation of evidence and Dr. Jassin's testimony, but I think he was unequivocal that the steps that he took were his own personal view of how to create a secure coin wallet, that they weren't required under the MBA, and that there were other much simpler, much more ministerial ways to do the same act and achieve the same result.

If there's nothing else, I will cede the podium.

THE COURT: All right, thank you.

MS. VANLARE: Your Honor, Jane VanLare. Very, very briefly. Just a point about the cooperation agreements. There was a point made I think about the fact -- some suggestion that perhaps the Genesis-released personnel are already otherwise obligated to do the things that the cooperation agreement would require them to do. And I just note that many of the Genesis-released personnel are no longer with the company. And obviously those who are still with the company, there's nothing sort of preventing them from leaving. So I just note that for the Court's consideration with respect to the cooperation agreement.

THE COURT: And does the cooperation agreement specifically address circumstances where someone is no longer employed if this obligation continues to cooperate?

MS. VANLARE: Yes. Yes, it does, Your Honor.

THE COURT: All right. It is what it is. I'm

just asking for a memory assist on that. All right.

MS. VANLARE: Other than that, Your Honor, I won't repeat what I already said. I think there's ample record here to support the Debtor's business judgment in granting the Debtor releases. Thank you.

THE COURT: All right, thank you.

MR. SHORE: Very briefly, Your Honor. You mentioned in questioning counsel the concept of paying with house money. And I want to be perfectly clear about what's going on here. We have a giant poker game, that's a fine analogy. But there is no house money. It's all the creditors' money. There is one card left to turn over. Is DCG right or are the Ad Hoc Crypto creditors right? The Debtors have proposed to chop the pot, and everybody has said let's chop the pot. You've got two players saying no, what we want to do is we want to go all-in. DCG wants to take all of the crypto creditors' money and go in against their own interests on the 502 issue and the Ad Hoc Group wants to take all of the dollar denominated creditors' money and go all in. It's not a fair result to force people to litigate the issue.

Now, because my arguments tend to the devilish side and not the heavenly side, I would love to find a way to put those two parties in a room and let them play with each other's money to resolve that issue. And DCG pays the

crypto creditors if they lose, and the crypto creditors pay DCG the surplus that is created if their claims are dollarized. But we don't have a way to do that.

And the reason I raise the issue of what did they really want is not to threaten them. But it's just not as easy as they say, nor is it as easy as DCG says. For the crypto creditors, if their claims were treated as executory contracts, they would have to file a rejection damages claim.

The statute says you value it at the time of the termination. We're just going to assume that's what the rejection means here, even though rejection is not termination. But that does not affect the ability of the Court to address the nunc pro tunc issue. Basically what they are saying is we want you, even though this case has been pending for all this time and there's a whole bunch of legal delay that is not the fault of the other creditors -- getting to that (indiscernible) standard in that long section they have on what is an appropriate nunc pro tunc order and what isn't. It is not clear that the right result here would be that the Court would determine that the rejection damage claim is calculated as of today, $68,000, and not the petition date, $21,000, and not the date the plan was solicited, $27,000. Everybody has got risk here. And all I'm trying to do as the fiduciary for all the

creditors is give most of the creditors what they want without taking a position of two non-fiduciaries, one paying an equity option and one playing a free option, to force people to litigate an issue which has dramatic effects on the recoveries.

So we ask that Your Honor accept the settlement as is, and we'll move on.

THE COURT: All right. Anyone else who wishes to be heard on the objection, CCAHG? All right. That matter is now addressed. So two out of three ain't bad, as Meatloaf says. So we have one more. And it's the United States Trustee's Office.

I know that that objection has been narrowed. So I'm not sure who the right person to hear from first on that in light of that circumstance.

MS. VANLARE: Your Honor, Jane VanLare, Cleary Gottlieb, on behalf of the Debtors. I will just briefly summarize what I believe are the outstanding issues and then I will quickly cede the podium to Mr. Zipes so he can describe his position.

The first issue is the payment of the Ad Hoc Group counsel's fees. I won't spend time on it because I think it's been amply addressed both in my presentation as well as various parties. But that's issue number one.

Issue number two is the plan's proposed

exculpation of non-estate fiduciaries. And I believe that the only non-fiduciaries who are being exculpated here are the members of the Ad Hoc Group's Steerco. We believe those individuals were instrumental in negotiating key aspects of the plan and the Gemini settlement.

Also -- sorry, it's the Ad Hoc Group Steerco members and Gemini, but solely as the distribution agent because it's going to be playing the important role of making distributions per the Debtor's request.

Your Honor, the --

THE COURT: And that exculpation is tied to everything done in the case.

MS. VANLARE: Correct. Correct. It's solely as the distribution agent.

THE COURT: But I mean as well as for the Ad Hoc Steerco, meaning that, again, as exculpation clauses are --

MS. VANLARE: Correct.

THE COURT: -- it's tied to the activities in the case.

MS. VANLARE: That's right. That's right. Your Honor, we think that the courts in this district routinely approve exculpations of prepetition conduct that are narrowly tailored as these are. And therefore we believe that you should overrule the U.S. Trustee's objection on this point.

The next point is the so-called no liability -- it's actually related, the no-liability provision of the plan that exculpates the Gemini distribution agent and its related parties for certain actions taken directly in furtherance of the performance by the Gemini distribution agent of its duties under the plan. And again, for the reasons I just described, we think that's entirely appropriate given the context and their role.

Then the final issue that we have is some -- is I believe the U.S. Trustee has raised a concern that there is some daylight between the releases and exculpations, which are narrowed, and the injunction. And we don't think that's the case, actually. And we believe that there is a sentence in the plan which makes this clear, which -- And I'll just read the sentence: "Further to the maximum extent permitted under applicable law, the confirmation order shall permanently enjoin the commencement of prosecution by any person or entity whether directly, derivatively or otherwise, of any cause of action solely to the extent released or exculpated pursuant to this plan. Including the enjoined actions against any released party or exculpated party other than the Debtors or the winddown Debtors."

So in other words, we believe the plan already makes it clear that the injunction provision isn't meant to go beyond the releases and exculpations. I believe that's

the extent of the remaining issues, but I'll let Mr. Zipes comment as to whether or not there is anything else.

THE COURT: All right. Mr. Zipes?

MR. ZIPES: Good afternoon, Your Honor. Greg Zipes, with the U.S. Trustee's officed. Ms. VanLare has accurately summarized the remaining objections. They are located in Footnote 3 of the letter that Debtors' counsel submitted. We would elevate that footnote perhaps to the first paragraph of that letter, Your Honor. But we'll take it in a footnote, and that does adequately summarize our position.

Your Honor, I'll be brief. I can go in whatever order the Court wants, but in the absence of -- I'll just dive into it --

THE COURT: Sure.

MR. ZIPES: -- starting with substantial contribution. Your Honor, I was a little bit surprised by the turn of events today where the parties -- the professionals started arguing that in fact 503 may not apply at all. And I'd like to move the conversation back to 503.

This Court did cite Lehman, and that's a District Court case that my office had appealed from the Bankruptcy Court. Judge Sullivan was involved with that. And basically, in so many words, you can't -- if there's a specific provision that applies, that you can't look to more

general provisions under the Bankruptcy Code. That's Supreme Court precedent under RadLAX and other Supreme Court precedent. 503, the issue is slightly different there, Your Honor, in Lehman, but the point is that 503 is the proper place to look if professional fees are being dealt with in the context of ad hoc groups.

And Your Honor, we've discussed testimony to a certain degree. Mr. Aronzon was the witness that the Debtors proffered for better force on the point of whether ad hoc fees were reviewed. And Mr. Aronzon, under oath -- under questioning, said -- the question was, "But you didn't review all the individual fees, did you?" And he said, "No."

And I believe, Your Honor, that the standard for substantial contribution is higher than just these fees were incurred by us. There has to be, obviously, ad hoc committee professionals or --

THE COURT: Yeah, well, let me ask you about that. So, I think there's a couple of different objections here. But if you look to 503 for a second -- so let's do that. There certainly was a lot of evidence about the activity of the two groups, particularly the ad hoc group. And there's certain things that I think I've been pointed to that are steps that help bring this case to this point.

So I'm thinking particularly if the ad hoc group's

discussions with New York Attorney General's office and its alleged victims in that lawsuit, not surprising that they would have a conversation. And certainly, the other thing about a plan support agreement and other things that help essentially gather consensus so that it allows the case to move forward. And it's sort of beyond simply the parochial. And certainly, the ad hoc group has a sizable number of people and amount.

So I can understand if this is sort of a documentation question. Well, yeah. I think that may be something that's fixable. And so the question is basically hearing the testimony, whether there's sort of a still -- a substantive question as a matter of what evidence -- the evidentiary record is about the role of -- let's take the ad hoc group to start -- of the ad hoc group in terms of their substantial contribution.

MR. ZIPES: Your Honor, I think that in the usual context, there would be a showing of substantial contribution. And then the question would be what do the individual time records show at that point.

THE COURT: All right.

MR. ZIPES: So I --

THE COURT: I think we can probably figure that out. Because I understand -- somebody can remind me -- I don't have as good a memory for documents as I do for

witnesses -- what the provision is. Is it a specific dollar amount? I think it's an up-to? Or is it just all fees?

MR. ZIPES: Well --

MR. ROSEN: For the ad hoc group - sorry.

MR. ZIPES: Go ahead.

MR. ROSEN: For the ad hoc group, there is no cap on it, Your Honor. There was with respect to the Dollar group.

THE COURT: Okay. I knew there was a cap somewhere. All right. So, to me, that's a much more fixable problem. Again, I'm not going to be naive enough to volunteer and say that you all would be thrilled with that. But I think it may be fixable problem in the sense of sharing what the fees are and having the U.S. Trustee's office take a look. And if that solves your problem, I might be inclined to do that. And if I need to make a ruling, I'll make a ruling. But would that be something that would fix your problem? Mr. Zipes?

MR. ZIPES: Your Honor, we think it's important that it be on the record and that there be some --

THE COURT: No, no. That's fine.

MR. ZIPES: Yes. And Your Honor --

THE COURT: As I think my earlier harangue, which you all had to listen to, made clear, I recognize cases evolve and we try to make progress where we can. So, that's

perfectly fine.

MR. ZIPES: And Your Honor, my office has agreed to arrangements in the past on substantial contribution where we ask that applications be filed and --

THE COURT: Well, I think at this point, I did ask that question about applications earlier. And I think I was trying to avoid something that was not a meaningful addition to the -- to circumstances. But the idea of sharing attorneys' fees -- and again, I think the devil's in the details, you can work this out. I just didn't want to have somebody say in order to check this box, I need to file this piece of paper that says exactly what I just said standing up. We'll try to avoid that, I would think.

MR. ZIPES: Your Honor, I appreciate that. One practical issue that I wanted to bring to the Court's attention is just when we review 503 applications, oftentimes they're sort of a recitation that this time is sort of for parochial reasons. And then this time is for -- we believe was a substantial contribution. And we didn't necessarily get that from --

THE COURT: Well, here's the thing. That can be awfully hard to separate. And will say that I tend to look at as to whether a substantial contribution has been made because I think it is awfully hard to tell, particularly as you're going forward, as to exactly how things are going to

come together. And so I think at the end of the day, if you look and say you all did things that contributed to the holding of hands in the context of an agreement.

So, for example, I think I had this conversation with someone in your office in connection with the AMR, American Airlines case, and unions having an agreement to get compensated. And it was clear, once you reached the end of the case, that the Union had played just a central role to lead to all sorts of good progress. But I do think there were times when the Union stood up and said the Debtors are wrong; this is terrible. And so I don't -- no one tried to make a thing to parse it out because, frankly, in those relationships, you sort of have to go through some of those other things to get to the progress.

So I'm not -- my thought is if they're reasonable fees, they're reasonable fees, because I think that I don't know that the statute for substantial contribution necessarily requires that I parse it out and put it into individual boxes. It requires that I find that there's a substantial contribution.

So, but again, I think the devil's in the details. I think there is, based on what I've gotten thus far, much like the American Airlines case, I have a pretty good sense of what people have been doing. And I think your office does too. Your office has been involved.

MR. ZIPES: Agreed, Your Honor.

THE COURT: So, what my thought would be for people to sit down and try to document that, provide attorneys' fees. Whether it's providing samples, whether it's providing some of the description of tasks, I'm sure you could work through that. Some of that's already in the record.

MR. ZIPES: It is.

THE COURT: Yeah.

MR. ZIPES: It is, Your Honor. And we have gotten cooperation from the parties. There's just this underlying -- and maybe it was because this was an issue pushed to the end -- but, Your Honor, we basically agree with the Court.

I just want to know that it would be an issue possibly if this Court -- and if the parties are adhering to position -- that it's anything other than substantial contribution. But that's --

THE COURT: Yeah, I don't think we -- listen, as exciting as it would be to write another opinion on 503 and substantial contribution, I really don't want to stand in the way of an appropriate results you all are -- you know, again, and sort of I'm taking, frankly, my lead from you all, because it's pretty clear people have been communicating. They've been cooperative. Nobody sort of wants to stand on ceremony. And again I'm sure there's a

fascinating 503 opinion to write. But I've written a couple of those and I don't have a particular desire to necessarily write another one, as fascinating as it would be.

So again, my hope is to reach a just result. And so that's why I think I flagged it for folks when we started confirmation to -- because I appreciate the additional evidentiary record that was provided because I think that was very helpful for everybody involved, including myself.

MR. ZIPES: Your Honor, I'll move on because I understand. These are points that are important and oftentimes, Your Honor, you'll see that my office is the only one standing up at confirmation raising some of these issues. But, so my office believes they are important to raise and they --

THE COURT: No, no. Again, that's fine. That's fine. And I know we're talking about this being done sort of at the end and the people literally are at the end.

MR. ZIPES: Yep.

THE COURT: Sometimes that's the right spot to deal with something like substantial contribution after you've had sort of the full record and discussions about things. So --

MR. ZIPES: And let me move on, Your Honor --

THE COURT: Sure.

MR. ZIPES: -- to the no liability provision,

which is an exculpation provision as well. But this, Your Honor, goes to a post-effective date entity that -- and asking for sort of approval of this Court. And we just think that exculpation provisions generally of this nature are no liability provisions, and as of the effective date under 1125. So that --

THE COURT: I can see the timing point from your office's perspective. I guess my understanding is what's being asked is that Gemini, to the extent it's assisting the Debtors in the estate and getting distributions out, doesn't want to be sued for doing that. And so that's a bit unusual.

But I do think, given that we're talking about so many Gemini Earn Users, and Gemini's role as the agent, that it's an effective and efficient and appropriate thing to do. And since it is essentially effectuating the plan, I don't know that it's really post-effective date. Because I think what it's doing is part of making the plan effective. Maybe somebody can straighten me out if I've got it wrong on that.

MR. ZIPES: Your Honor -- and I think that would be the Debtors' position. They probably don't want to straighten you out on that one. But the -- I will also state that there's no temporal limit, regardless. So this could be --

THE COURT: All right.

MR. ZIPES: -- This could be --

THE COURT: I think we could make it a task limit. Make it very clear what it is. I'm not interested in expanding the scope of traditional exculpation clauses beyond what actually relates to the case. So let me make that clear. And that's -- I don't think I would be doing that. But again, if they are -- the proposals for them to distribute the value that exists under the plan to folks with whom they have a relationship and it's going to lead to a lot less problems in the case, it does seem unfair to put them on the chopping block for being sued. So that would be my take on that. I think that that's fair.

I don't -- I also don't think it violates the policy concerns about expanded exploration because of what they'd be doing. So, what they're doing, I think is what makes this different.

MR. ZIPES: And Your Honor, I would just note the unusual aspect of that and the fact that oftentimes these are dealt with in post-effective date governance documents that are not necessarily under the Court's purview. And that's --

THE COURT: Yeah. And that's fair. I think it is an unusual circumstance. I would agree.

MR. ZIPES: Your Honor, and on the exculpation point as well, this is something that this Court has heard

from my office. We would cite Washington Mutual, and there are some non-estate fiduciaries being exculpated under the plan, which includes Gemini distribution for that matter. But Your Honor, that's another injection of ours.

THE COURT: Yeah. And again, I think my answer would be similar. If they are doing things -- we're talking about exculpation -- again, if they're doing things that are contemplated by the plan that need doing again, I understand Gemini's role here is unique. And so I would take a -- my suggestion would be for the parties -- for you to sit down with folks and look at what actually is being done by these folks. So I think a Gemini distribution agent makes a lot of sense to me.

And the ad hoc steering group, my understanding is that that's really in connection with their efforts for which we're talking about substantial contribution. Or am I missing something? Or is there something different than that?

MR. ZIPES: I think, Your Honor, we can work that out. But I'm asking that the parties -- we ultimately -- they agreed to file something online in that regard so it's part of the public record, but --

THE COURT: Yeah, that's fine. I think we can put that into the confirmation order. I mean, or some other thing to plan separately, whatever it is. I think that

that's -- that would -- if it's a record that you want, I think that that's something that would be fairly -- that box can be fairly easily checked, I would think.

MR. ZIPES: Your Honor, I'll move on, because -- under the injunction provision, Your Honor, the injunction provision has a sentence in it -- and oftentimes this is worked out, and unfortunately, again, it wasn't prior to the confirmation. I know the Debtors in good faith tried to come to an agreement with my office and we just didn't get there.

There's a specific sentence in the injunction. It's listed in our objection as well, Your Honor. And it basically bootstraps the injunction, which goes to assisting the discharge in this case. And it applies it to exculpations. And we get that from the language in the injunction, which has been flagged by Debtors' counsel. It is in our objection. It's in the injunction language as well.

THE COURT: Have they described your concern accurately in saying that this is a concern, that there's daylight between the releases and exculpations of the injunction? Is that the issue?

MR. ZIPES: Your Honor, the issue is that it might be appropriate for exculpations, but it's not appropriate under the injunction provision. It's extending an

injunction to acts that wouldn't apply under --

THE COURT: Well, I mean, if the injunction -- if the releases and exculpations are going to mean anything, they need to be enforceable, right? I mean --

MR. ZIPES: They're enforceable under their own provisions, the exculpation provision. There's no need to bring them in and confuse matters with any injunction language as well.

THE COURT: But I guess my thought is I don't -- then it's -- I mean, then it's, I guess, at worst redundant. And if I was going to apply the redundancy rule to plans --

[LAUGHTER]

THE COURT: -- and confirmation orders, I'd have to quit my day job. So I guess my thought is, I don't -- yeah, as long as -- I mean, my view is, as long as it does not grant some additional license, some additional daylight, and we all know the tried and true language -- notwithstanding anything else in the plan, the confirmation, or wherever it is, this is coextensive with releases and exculpation. So...

MR. ZIPES: Your Honor, to the extent that it's a hypothetical and a hypothetical situation arising, but it is covered -- it's not properly an injunction --

THE COURT: Yeah. I suppose there's an interesting law review article to be written on that. I,

again, don't want to be the one to write it. So if it doesn't -- if it's non-substantive, I think we can -- again, I'm not troubled by it. It is -- does, in your point, does seem to be a bit belt and suspenders. But again, there's a lot litigation in this case, and so to the extent belt and suspenders makes it very clear what the protections are, and they aren't, that's probably not the worst thing.

MR. ZIPES: Okay. And then, Your Honor, I think our last point -- and again, Your Honor -- again, this is the end result of a lot of negotiations and a lot of things haven't been changed already. I mean, these are just -- this is language that my office felt was important and we -- we drew a line in the sand on these.

Your Honor, the final point, I think, is the issue of what happens to claims that are -- that have been listed in the schedules as disputed, contingent, unliquidated, and for which no proof of claim has been filed. And here, the plan is finding that finding that they shall be deemed disallowed and shall be expunged. And again, Your Honor, just as a matter of --

THE COURT: Oh, well, that one, I think, you have me on. Yeah, I think there's a process for claims allowance and disallowance, and it is what it is and I don't think we should change that in the plan. I don't know that that's - I don't know that I want creditors to have to worry about

looking for that kind of a provision in the plan.

MR. ZIPES: And that -- and we just ask that they track the appropriate bankruptcy rule language relating to claims objections.

THE COURT: Yeah. I mean, unless I'm missing something, just -- surprise is not a good thing for anybody and...

MS. VANLARE: Your Honor, I can address that one point. Jane VanLare, Cleary Gottlieb. So I think with respect to the claims language, what we had proposed -- and I don't think we've just had a chance to finalize it -- but we had proposed adding into the language that Mr. Zipes just referenced, the clause "subject to bankruptcy Rule 3003(c)(3)", to make clear that we're consistent with the rules and we're not trying to do anything that would not otherwise be permissible.

THE COURT: Yeah. I guess the only thing I would say is, since there are a lot of individuals who are reading this, that even if that's technically correct, it may not be sufficiently transparent. So I'd ask you to come up with some language that's transparent. Nobody should have to read that and say what point; what does that mean for me? But I think on the substance, it sounds like -- I can't see you, Mr. Zipes.

MR. ZIPES: (indiscernible)

THE COURT: On the substance of it, I think we're all in agreement. I think that that's just an important thing to get right.

MS. VANLARE: Your Honor, I don't have anything else to say with respect to the other points, other than on the substantial contribution, the fees. Just to clarify for the record that Mr. Aronzon may not be the one reviewing time details. I don't think that would be customary. But the time details were provided to the Debtors and Debtors-in-house counsel. So I just note that.

But I heard what you said, and we obviously take your --

THE COURT: Fair enough.

MS. VANLARE: -- take --

THE COURT: Fair enough. And listen, I'm not -- I know these kinds of things from this side of the bench can seem easy and then they become a morass. And that's not my intent. So if people -- you talk to each other, and if you need some direction or some assistance, I'm happy to provide it.

MS. VANLARE: Mm hmm.

THE COURT: We can have a quick call about that. I'm not trying to just say, it's your problem, good luck, and you know, a month later you're still haggling over that. That would not be a very good result.

Page 273

MS. VANLARE: So I have nothing further on Mr. Zipes comments. I do want to just make one clarification point for the record that's been brought to my attention.

So, with respect to something I said earlier, I do want to clarify the DCG did request as part of confirmation discovery information about the governmental claims, and we provided those claims in response to that discovery. So I do want to make sure that the record is clear.

THE COURT: All right. And is that --

MS. LIOU: Your Honor?

THE COURT: Yes.

MS. LIOU: Sorry. Jessica Liou, for the record, Weil Gotshal & Manges, on behalf of DCG. That's right. And I think that was consistent with my earlier statement that the proofs of claim themselves were provided to us, but nothing in addition to that. Privilege was claimed over the rest of the materials.

THE COURT: Right. Although, I guess they are claims of governmental entities, right, as opposed to the Debtors' claims, right? So, in the sense that the Debtors are responding to the government allegations. So, another - - it's a little different than asking somebody, you're a plaintiff, it's your lawsuit, what's the basis for your lawsuit? It's a little different to say.

MS. LIOU: Understood. It's just a quandary we

were all dealing with, where we were not in a position without any information, records, correspondence, to be in a position to file a proof of claim -- an objection to the proofs of claim.

THE COURT: Yeah. All right. All right.

MR. ROSEN: Can I take one minute, sir?

THE COURT: Sure.

MR. ROSEN: Thank you. Your Honor, again for the record, Brian Rosen, Proskauer Rose, on behalf of the ad hoc group. Just to address something that Mr. Zipes said. The arguments -- meaning the non-503, the 363, they have been raised previously in the papers extremely eloquently by Mr. Lieberman and the Dollar Group. We mentioned it as well.

THE COURT: And so let me make it clear, as the Judge, I reserve my rights on those issues. But what I try not to do is to -- if something can be resolved, to have a very interesting issue linger and then you will have to deal with it later. That just seems to be an unfortunate result.

MR. ROSEN: I appreciate that. With respect to the substantial contribution, as Ms. VanLare said, we have been providing to the Debtors on a regular basis all of our time records and our outstandings. We also provided, as requested by Mr. Zipes in February, copies of a representative amount. We also provided him with the total run rate, so we knew exactly what amount is outstanding. So

we're not trying to catch anybody by surprise here, Your Honor. I just wanted that to be clear for the record.

Also, I hate to carry --

THE COURT: (indiscernible)

MR. ROSEN: I hate to carry the water for Gemini, but in the Gemini agreement that we've all been working really hard to negotiate, there is a provision in there with respect to them being appointed as the distribution agent on behalf of the Debtors and everybody else. To me, it's akin to an indenture trustee making distributions pursuant to a plan, and they would be exculpated for those distributions.

THE COURT: Yep. Yep. No, I got it.

MR. ROSEN: Thank you, Your Honor.

THE COURT: Thank you. Yeah. And since I'm hearing sort of an agreement on the substantial contribution of the two entities, that's why I'm sort of going that way. It seems to be the appropriate path of least resistance for everybody. So, you have enough things to litigate than to create potential issues down the road.

All right. So let me ask if there's anything else from the Debtors this afternoon?

MS. VANLARE: Your Honor, the only remaining portion of our presentation is the 1129 factors, which I'm happy to go through, if you'd like --

THE COURT: Well, let me ask if it's significantly

different than the brief -- the 1129 -- because I do have proposed findings of fact and conclusions of law that went through 1129. We all know it's a glorious speech. But I --

[LAUGHTER]

THE COURT: -- I did look at that before I came out. Certainly, I don't want to cut you off if there's some particular issue that you wanted to identify, or if there's some stakeholder here who says we'd like to hear what Debtors have to say on X. Again, because surprise is not a good thing in making an appropriate record.

But with the papers that I have and the papers that I will receive, I don't know that it's necessarily the best use of all your time.

MS. VANLARE: I was looking forward to going (indiscernible) --

[LAUGHTER]

MS. VANLARE: I don't believe there's anything different.

THE COURT: All right. All right. So, anything additional from the Committee?

MR. SHORE: No, Your Honor.

THE COURT: All right. From the ad hoc group?

MR. ROSEN: No, Your Honor. Thank you.

THE COURT: All right. Anything else from any other party who is a plan proponent? Don't mean to group

people together, but just in the interest of expediency? Anything else from DCG?

MS. LIOU: No, Your Honor.

THE COURT: All right. And by the, looking at the clock, this is why I was concerned about time, because it seems inexorable that things always take a little longer. But thank you. I appreciate you being flexible this morning.

MS. VANLARE: Your Honor, I'm just reminded of something, a point that you had raised earlier. Chainview Capital, or the Chainview reservation or rights. We did reach out to your counsel during the hearing and they confirmed they have no issues.

THE COURT: Okay, thank you. That was actually on my list, which I was going to get to after canvassing the room. Anything else from any other party?

All right, so I did have a short list. Chainview Capital was actually on it. Also a request to order the transcript of today. And I think I have a hard copy of everybody's presentation who had one. To the extent -- I do think the ad hoc group had a couple of extra slides.

MR. SAZAT: It wasn't extra slides. It's content that appears only if you play it on PowerPoint.

THE COURT: Ah.

MR. SAZAT: But on a printed out copy, it just

looks overlapping and --

THE COURT: Okay.

MR. SAZAT: -- looks nonsensical.

THE COURT: All right. We have an electronic copy. And I look forward to nothing more than --

[LAUGHTER]

THE COURT: -- the presentation coming alive. Once again.

MR. SAZAT: Hit slideshow. That's (indiscernible).

THE COURT: All right.

MR. SAZAT: You don't have to have a streaming service, Your Honor. can skip over the (indiscernible) slide if you don't want to (indiscernible).

THE COURT: All right. Well... And that's maybe the best part. Nothing personal. All right. Unless there's nothing else from any other party, want to thank you all for your flex -- oh.

MR. O'NEAL: One thing. I'm sorry, Your Honor.

THE COURT: Of course.

MR. O'NEAL: Sorry, almost. It's the exclusivity extension. I'm just thinking that because it expires today, we're going to be submitting an order. Everybody's reviewed it.

THE COURT: Okay.

MR. O'NEAL: But would you be able to --

THE COURT: I'm going to so order the record on that --

MR. O'NEAL: Thank you, Your Honor.

THE COURT: -- so you don't have any concerns. Absolutely.

MR. O'NEAL: Mr. Kessler appreciates that.

THE COURT: No, that's fine. You can get it to me tomorrow. That would be just fine.

MR. O'NEAL: Call off the plan.

[LAUGHTER]

THE COURT: Thank you all. I will thank you all for regular presentations as well as for your flexibility. I know I interrupted a lot of folks a lot of times. It's invaluable to get your thinking on things in real time, so I don't go back there and say, I should have asked the following questions. I know it does violence to people's presentations, I say this all the time. I know you have beautiful speeches prepared. But like you probably suspect, and it is true, that I already have your beautiful speech, which is your brief. And the ability to go back and forth is very, very useful. So...

And I used to think when I argued in front of the Second Circuit that sometimes if I get a hard time from somebody, I'm like, well, I know exactly where they stand

(indiscernible) exactly address the kind of concerns that were raised. So there is that benefit. And again, I do appreciate it. Very, very helpful presentations all the way around.

And with that, I will bid you all a good evening and thank you very much.

ALL: Thank you, Your Honor.

(Whereupon these proceedings were concluded at 4:06 PM)

# C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

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